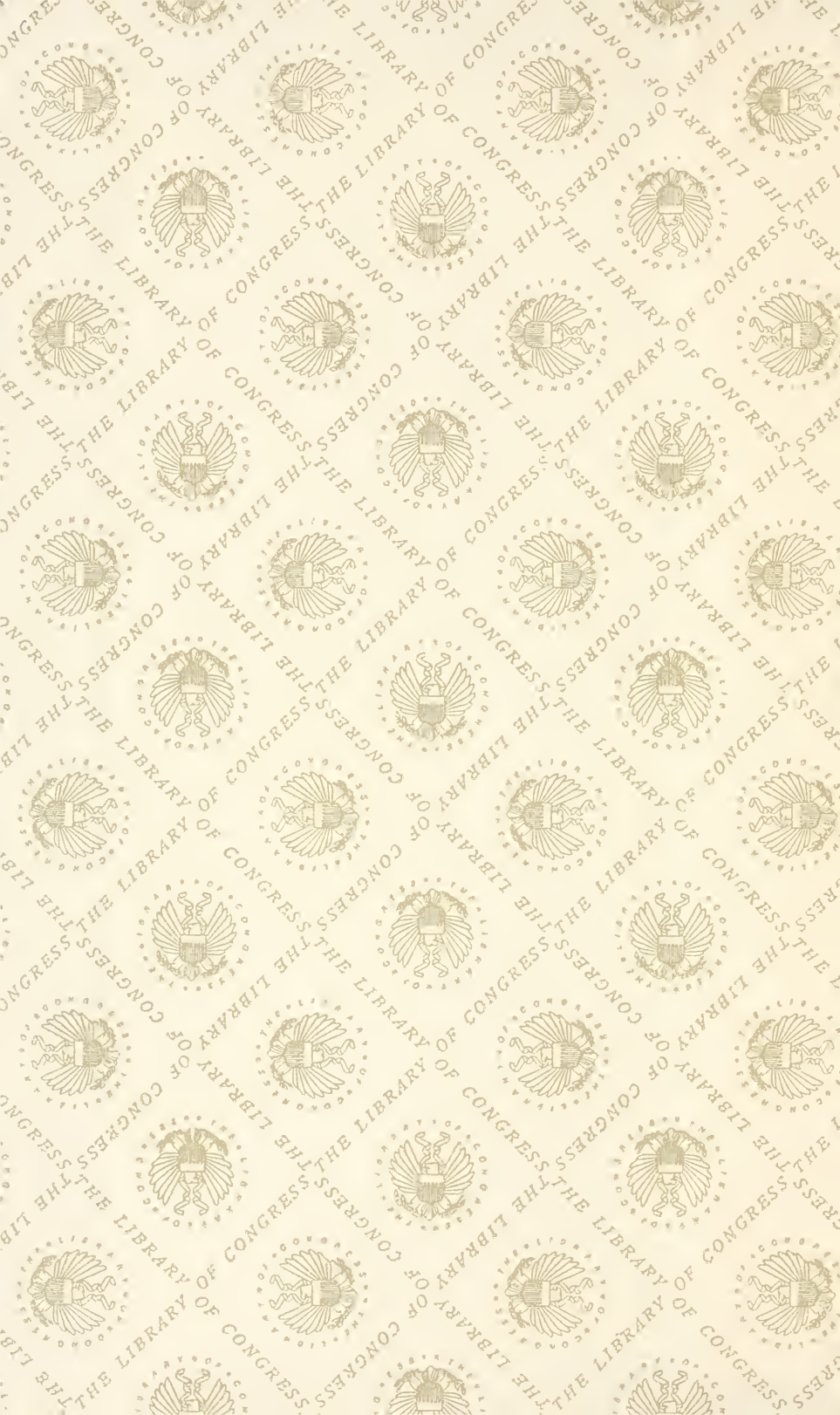
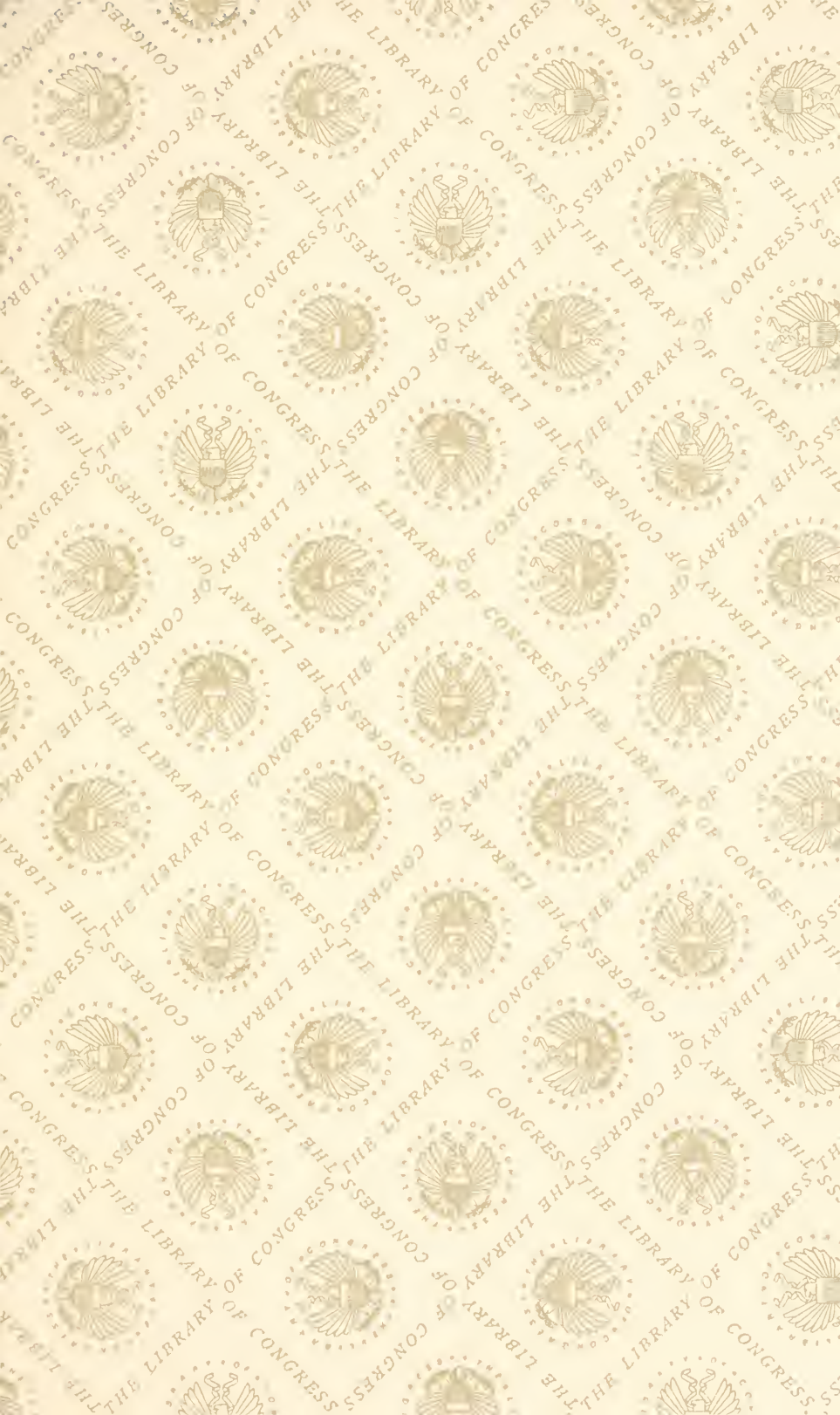


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U. S. Commission to investigate
" ALLEGED FRAUDS ON CREEK INDIANS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES, 726
25

TRANSMITTING

*Information in relation to Alleged Frauds on the Creek Indians in
the Sale of their Reservations.*

JULY 3, 1838.

Read, and laid upon the table.

To the House of Representatives:

I transmit a report from the War Department in relation to the investigations of the allegations of fraud committed on the Creek Indians, in the sales of their reservations, authorized by the resolution of that body of the 1st of July, 1836.

M. VAN BUREN.

WASHINGTON, July 3, 1838.

WAR DEPARTMENT, July 2, 1838.

SIR: I have the honor to lay before you, for transmission to the House of Representatives, a report of the Commissioner of Indian Affairs, accompanied by copies of the general reports of Messrs. Crawford and Balch, commissioners under the resolution of that body of the 1st of July, 1836, for investigating the frauds alleged to have been committed on the Creek Indians in the sales of their reservations.

Very respectfully, your most obedient servant,

J. R. POINSETT.

The PRESIDENT of the United States.

WAR DEPARTMENT,
Office Indian Affairs, July 2, 1838.

SIR: I have the honor to submit, herewith, to be laid before the President, with a view to their transmission to the House of Representatives, Thomas Allen, print.

copies of the general reports of Messrs. Crawford and Balch, commissioners under the resolution of that body of the 1st of July, 1836, for investigating the frauds alleged to have been committed on the Creek Indians in the sales of their reservations.

Very respectfully, your most obedient servant,

C. A. HARRIS,
Commissioner.

Hon. J. R. POINSETT,
Secretary of War.

Report of T. Hartley Crawford on the frauds charged to have been perpetrated in the transfer of Creek Indian lands.

WASHINGTON CITY, May 11, 1838.

SIR: The President of the United States was requested, by a resolution of the House of Representatives adopted in July, 1836, to institute an inquiry into alleged frauds in the purchase of the reservations of the Creek Indians.

To carry into effect the resolution referred to, the late Chief Magistrate constituted a commission, consisting of Alfred Balch, Esq., and the undersigned. With the information of their selection for this duty, the then Secretary of War, under date of 12th July, 1836, transmitted instructions, of which so much as is material to the present purpose follows:

"Your duties will divide themselves into two distinct branches: first, the investigations into the causes of hostilities, and into any other transactions connected with the contracts for the sale of Creek lands, which may lead to prosecutions before the tribunals of justice for criminal offences; and, secondly, the inquiries necessary to do justice to the Indians and to the parties claiming to have purchased their lands."

On the first division of the assigned duty, a report was made to your Department in January, 1837. As to the last, the Secretary proceeds: "With respect to the second branch of the inquiry, the examination of these Indian contracts, with a view to confirm or set them aside, the enclosed documents will give you full information. The President commits the whole matter to your discretion. You are at liberty to pursue such a course in relation to it as you may think proper. The great object is to do justice to the respective parties; to set aside the fraudulent contracts, and to confirm the honest ones. The instructions heretofore given, copies of which you will find herewith, will make known to you the views of the President, both with respect to the end to be attained and the means to be adopted. So far as relates to your mode of proceeding, where the rights of parties are involved, I recommend to you to follow the principles laid down in these instructions. With respect to the public notices to be given, the investigations to be made, the places where they shall be held, and all other matters relative to this business, you will exercise your own discretion. Contracts which have been approved and certified cannot be set aside without the action of the President. Such cases must be reported here, with your opinion. All other reservations shall be open for conveyance under your direction. You can appoint cer-

tifying agents, who will be allowed the compensation prescribed in the regulations.

"The last investigation was interrupted by the Creek war. The gentlemen to whom it was committed seemed to be pursuing a proper course; and, so far as they have definitively reported, their decisions have been confirmed by the President. I am aware it is a matter of some difficulty to determine what course of proceeding you will adopt, more particularly as many of the Indians will have probably left the country before the commencement of your labors. But you are authorized, should you deem it necessary, to appoint one or more persons, with a reasonable compensation, to proceed to the Creek country west of the Mississippi, to procure any information you may require from them. The superintendent (Mr. Armstrong) will be directed to afford you any aid in his power.

"It is not at present known how soon the Creek Indians will leave Alabama, nor whether General Jesup, under the instructions which he has received, and a copy of which is enclosed, has permitted any conveyance of lands subsequent to the commencement of the present difficulties. He was authorized to do so, as you will perceive, in order that no impediment should exist to the voluntary removal of the friendly portion of the Indians; and, with that view, to permit them, at the risk of the purchasers, to convey their lands upon a proper consideration. As it was not possible to prepare, in time, a list of the approved contracts, it necessarily follows that every person making the purchase would do so, depending on the honesty of the Indian, and subject to the risk of a preceding conveyance.

"These circumstances General Jesup was required publicly to make known. No reports have yet been received on the subject; and, consequently, it is not known whether any thing has been done. As fast as any information is received, it shall be communicated to you; and letters will be directed to you at Columbus, Georgia, where you can have directions sent for forwarding them to you. Should the removal of the Creek Indians have been principally effected before your investigations are undertaken, the practical question, so far as relates to any fraudulent contracts, and to their vacation, with a view to put the Indians again in possession of this right, as to the mode of proceeding, would be one of some importance, and upon which you must decide after a full consideration of all the circumstances.

"You are authorized to call to your aid the district attorneys of Georgia, and both the districts of Alabama; and those gentlemen will be requested to co-operate with you whenever you may find it necessary to ask for their services.

"You will proceed to the execution of your duties as soon as you can conveniently do so, and pursue your investigations without any unnecessary delay. You will make to this Department a full report of your transactions."

The trust confided, and shaped by these instructions, was accepted; and, in relation to the contracts for Indian lands, the alleged frauds in procuring them, and the claims made under them, I have the honor to report:

That the commencement of the year 1832 found the Creek Indians the acknowledged holders of upwards of 5,000,000 acres of land, in the State of Alabama, of which, for all usufructuary purposes, they were, accord-

ing to the highest judicial opinion, the owners, so long as they chose to maintain their possessory right. This tract of country was their inheritance, and had belonged to those of their blood before our ancestors brought civilization to the western side of the Atlantic. It was the relatively small remnant of their former extended dominion which nourished and sustained a hardy, brave, and warlike people. The same causes which thinned their number, broke their spirit, and imposed upon them a sense of self-degradation, induced them to curtail their possessions, and, as they depreciated numerically, physically, and morally, to limit their woodland haunts to their wants, and, it might sometimes be, to yield to a necessity which they could not resist. The region that remained to them was, if considered in reference to agricultural purposes, more than they used; it was sparsely dotted with log huts, surrounded by a few acres of half-cleared and half-enclosed ground, not generally characterized by fertility, and worked by female hands. If regarded as the scene of their favorite amusement, and as furnishing the means of subsistence by the chase, game had in a great measure disappeared from this territory, which, with their indifference to the future, their indolence and general unthrifty conduct, left them in a state of actual privation, and often of great suffering. They were hemmed in on either hand by Georgia and Alabama, with a close population, of whom the most respectable, from personal observation of their degraded condition, and from occasional collisions, were not very favorably inclined towards their savage neighbors, while the rapacious and unprincipled intruded upon and mingled among them; and against law, and in disregard of probity and conscience, sought their own gain at any expense of probity to the Creek; and, what was worse, by ministering to his evil passions and uncontrolled propensities, extinguished all the better qualities which are to be seen in the uncorrupted Indian.

Thus vitiated, they felt debased; their ignorance of our language and of business made them shy; they glided away among the bushes at the white man's approach, as the deer of the forest flies at the foot-fall of the hunter; their simplicity led them into the snares of cunning; they were without redress, their sorrows derided, their complaints scorned, and their persons abused. This worst of human conditions, in which all the kindness that springs from mutual intercourse and necessary confidence was wanting, in which the sympathy that belongs to common wants and reciprocal dependence did not exist, where griping and unfeeling avarice was at daily work to persuade, to defraud, to wring or wrest out of ignorance and imbecility all they had, was one that no friend of the Creeks could desire to continue; and long it would not have continued, for the corrosive influences, which were eating up their small means, were as surely destroying their lives. These miseries, owing in part to their special condition, but more, it must be admitted, to the cupidity and wickedness of our own race, belonged essentially to the existing circumstances, and will always be found where they are. No Government, however it may mitigate, can wholly prevent them. The conviction of this, combined with the settled policy of the United States, and other considerations, which need not be particularly mentioned, conduced largely to the making of the treaty of 24th March, 1832.

By this instrument, which was ratified by the United States on the 4th April, 1832, and thenceforward became "obligatory on the contracting par-

ties," "the Creek tribe of Indians cede to the United States all the land east of the Mississippi river." In consideration whereof, the Government contracted to pay them in money, for various purposes, one hundred and thirty-six thousand two hundred and eighty dollars; to allow them an additional annuity of twelve thousand dollars for five years, and thereafter an annuity of ten thousand dollars for the term of fifteen years; to grant to particular individuals annuities for life; to pay to those who had emigrated at their own expense the sum of fifteen dollars each, provided the aggregate did not exceed fourteen hundred dollars; and to divide among those who had suffered in consequence of being prevented from emigrating, the sum of three thousand dollars. It being a leading object of the United States to induce them to emigrate, it was further provided, that so many as were willing to go should be removed at the expense of the Government, and maintained for a twelvemonth at their new homes. To each emigrating warrior arms and ammunition were allotted; to each family, a blanket; and to the purposes of education three thousand dollars annually were appropriated, for twenty years. It was also stipulated that iron and steel should be furnished them, and blacksmiths supported for twenty years to work them up; and lastly, on this branch of our engagements, "that the Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians," and "a patent or grant issued therefor," according to the act of Congress of 2d May, 1830.

That provision of the treaty which principally concerns this report, which was the charter of Creek reservations, and the origin of all the difficulty that has fallen upon the Government and the Indians, relates to portions of the ceded territory set apart for Creek use, and formed the chief consideration of the cession. It was a most unfortunate stipulation, which it required no great forecast to see might give birth to dishonest practices, that the weakness of the Indian would make successful, and must be productive of embarrassment on every side. The apprehension was strongly entertained and expressed by the then Chief Magistrate, than whom no man was more capable of forming a correct judgment. The proposition was declined and opposed; objections, which subsequent events have shown to be too well founded, urged, but pressed in vain upon the deluded Creek, whose misguided pertinacity was, doubtless, fortified by those who were looking forward to the consummation of the frauds their imaginations had even thus early devised. Expostulation was fruitless, and the Government was compelled to yield the only condition upon which the Creeks would negotiate. The second, third, and fourth articles of the treaty, being the basis of all that has been done officially in connexion with individual Indian landed interests, in the Creek country, since the 4th of April, 1832, are copied in full:

"Article 2. The United States engage to survey the said lands as soon as the same can be conveniently done, after the ratification of this treaty; and, when the same is surveyed, to allow ninety principal chiefs of the Creek tribe to select one section each, and every other head of a Creek family to select one half section each; which tracts shall be reserved from sale for their use for the term of five years, unless sooner disposed of by them. A census of these persons shall be taken, under the direction of the President; and the selections shall be made so as to include the improvements of each person within his selection, if the same can be so made, and, if not, then all the persons belonging to the same town entitled to selections,

and who cannot make the same so as to include their improvements, shall take them in one body in a proper form. And twenty sections shall be selected, under the direction of the President, for the orphan children of the Creeks, and divided, and retained, or sold for their benefit, as the President may direct: *Provided, however,* That no selections or locations under this treaty shall be so made as to include the agency reserve.

“Art. 3. These tracts may be conveyed by the persons selecting the same to any other persons, for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed for that purpose by the President, but shall not be valid until the President approves the same. A title shall be given by the United States on the completion of the payment.

“Art. 4. At the end of five years, all the Creeks entitled to these selections, and desirous of remaining, shall receive patents therefor in fee simple from the United States.”

It was further covenanted by the United States, that twenty-nine additional sections should be located for the Creek tribe generally, and there were special grants to Benjamin Marshall and Joseph Bruner. About these twenty-nine sections, the twenty sections of orphans' lands, or the special locations of Marshall and Bruner, there is no dispute or difficulty at present, and they are only mentioned as being articles of the pact relating to land; and, with the particulars previously referred to, and a provision respecting intruders, embrace every material part of the treaty.

Without indulging any sickly sympathy for Indian wrongs in all parts of North America, or casting reproach upon one section of the country more than another for injuries inflicted, to which it is too late in the day to apply a full remedy, it may, without indelicacy, be observed that this treaty furnishes the most striking evidence of the relative positions of the contracting parties. Unlike other vendors or purchasers, each protecting himself by such precautions as sound discretion and legal control furnish, we have feebleness reposing with confidence on the strength with which it could not wrestle, and one of the parties undertaking to perform his own part of the engagement, and at the same time to secure the other in the full and fair enjoyment of whatever advantage accrued to him by the arrangement. It is a great moral spectacle, and appeals to us with a force that cannot be resisted, to fulfil, to the uttermost letter, our engagements; to right whatever wrongs have been done the Creeks in the pretended and fraudulent transfer of their reservations; and the sense of integrity and of manhood in every breast responds that in them a stronger obligation, if possible, than treaty duty is felt, not to deceive confiding imbecility. When the Indians affixed their signatures to the treaty, nothing further remained for them to do; their whole duty was performed; ours had not begun. It was commenced, however, immediately; and it is a happy reflection that, in the progress of its discharge, nothing which the Executive could do has been left undone, and that the most anxious efforts have been made to redress the frauds which the system of Indian reservations could scarcely fail to produce.

In conformity with the provisions of the second article of the treaty, orders were issued on the 2d May, 1832, for surveying the land transferred by that instrument. That work was prosecuted with the greatest diligence, which enabled those employed on the duty to complete it in

December, 1833. The taking of a census of the Creek nation proceeded contemporaneously, and the return, made in May, 1833, announced an Indian population of 23,566 souls, and that there were 6,557 heads of families, entitled severally to a half section of land. If to these be added 90 sections assigned by the treaty to the chiefs, the 20 sections for the benefit of the orphan children, and the 29 that belonged to the Creek tribe, we have an aggregate of 6,696 sections and half sections that were to be separated from all other lands for Indian ownership. Looking at the extent of this branch of the duty, covering 2,187,200 acres of land, and reflecting that the whole territory (amounting, inclusive of the reservations, to about 5,200,000 acres) was surveyed between May, 1832, and December, 1833, and, as it could not be anticipated where the reserves would be located, divided into townships and sections, halves, quarters, and eighths of sections, with a view to public sales, after the Indian claims were satisfied, it must be allowed this was a most arduous undertaking, and that no time was lost in its execution. The special provisions of the treaty in regard of Creek improvements increased the difficulty of the locating duty, and, to forward its performance as much as possible, the Department constituted a commission in October, 1833, to allot his reservation to each entitled Indian, whose labors were closed in January, 1834. All the preparations were thus made, that were requisite to sales by reserves. But to avoid any unnecessary delay, certifying agents were appointed in November, 1833, to superintend sales, for whose guidance regulations (which will be found in the appendix, letter A) were adopted by the War Department on the 28th November, 1833, and approved by the President of the United States on the same day. To these supplementary regulations those of appendix B were added on the 18th December, 1833, which were modified by additional regulations (appendix, C) of 7th March, 1836. It has been observed that the surveys were completed in December, 1833, and the work of locating finished in January, 1834, but that agents were appointed in November, 1833, to certify sales; these they were authorized to approve, as the locations were established, (see twelfth original regulation, appendix A,) with the intent of affording the Indians an opportunity of selling their lands at their value, as early as it might be their pleasure to do so. The agents were furnished with several lists, each within his own sphere of action, of the reserves, and of the lands to which they were respectively assigned, and in the month of February, 1834, were actively engaged in the discharge of their duties; before which time all the necessary preliminary arrangements had been fully made.

At this stage it may not be improper to pause for a moment, and look at the exposure of these ignorant and barbarous wards of the United States to the ravages of cunning and roguery, and to inquire whether proper precautions were taken to secure them against the attempts that were morally certain to be made to persuade, to deceive, to intimidate, and to coerce them out of their rights.

Their entire want of acquaintance with business, their incapacity justly to appreciate property or fix upon it a true value, their habits of life and limited conceptions on all subjects, and ignorance of the language of those who sought contracts for their lands, placed them powerless in the hands of the purchasers. Silver, the only circulating medium of which they know any thing, was almost the only article of value to them; they had

been accustomed to its use in small amounts, in supplying their circumscribed wants; and a few hundred dollars were regarded as a treasure that their short-sightedness would make exhaustless. They are like children, led away by the passion of the moment, and bent upon its gratification at all hazards; they did not look beyond the hour, and could be flattered or deluded, under the influence of artfully stimulated desire, into any sacrifice that would furnish instant indulgence to the active propensity of the time. Their peculiar weaknesses and vices were acted on to the destruction of their means; the unprincipled would surely attack them on the points at which they were so vulnerable. Of so many facilities of making large gains by small investments, there are never wanting persons to profit. Where there are so many inlets for dishonest shrewd men, they are sure to enter, and sometimes to gorge all the avenues; and it is both humiliating and wonderful to reflect how the appetite for pecuniary gain grows with its gratification, especially if the stream of accumulation have an impure fountain. Individuals who disregard the promptings of conscience are to be found every where; but perhaps it is not unjust to say, that in frontier regions—in districts about to be, or recently settled—they are most numerous. Wherever the homes of any considerable body of red men are surrounded or bordered by the dwellings of our race, instinctive impulse as certainly carries the bad, cool, and wary, who, free from the dominion of the law and regardless of moral restraint, deliberately practise upon the foibles and vices of the Indians, and filch from them all they owned. Having reduced them to beggary and want, their necessities are used to sink them still lower, to teach them to forego all scruples, and to become the instruments of defrauding their brethren. These shameless acts become occasionally so numerous, and are so disgusting even to some of those engaged in them, that they produce satiety, and the recipients of them are self-compelled to disgorge their ill-gotten gains, as the stomachs of birds of prey are relieved by very offence at the quantity and grossness of the matter with which they are burdened.

Against harm from such exposure and such men, it was not less the intention and anxious wish than the duty of the Government to guard. With a special eye to these dangers were the regulations of November and December, 1833, and March, 1836, framed. They were adopted as reflection or experience, at their several dates, seemed to call for their different requirements—all tending directly to one point, the safety of the Indian, for whose protection the shield was widened and thickened as time showed that increase of defence was necessary. The first instructions, being the regulations of November, 1833, required every application to a certifying agent for his approbation to be accompanied by the written contract itself; and that, if the payments were all made to the satisfaction of the Indian, that fact must be clearly established before the agent; or, if they were not all made when the parties came before him, the contract itself must distinctly state the times and modes of payment, and the sum actually received. The agent was required, whenever it was possible, to have a personal interview with the Indian, and to explain to him fully the nature of the proceeding, with a view to his perfect understanding and approbation of it on mature consideration; and, when this was impracticable, to be content with nothing short of the clearest proof of the whole transaction; which proof he was enjoined to make a part of his return, and to say further why he had not seen the vendor.

In those cases in which the amount stipulated to be paid was less than the minimum price of the Government sales, (\$1 25 per acre,) the agent was directed to ascertain the actual value of the land, and he was to certify that the price was fair if he so believed, and in his certificate to furnish a general description of the quality of the land, that the President might consider each case and its circumstances with care, and come to a just decision thereon. The general idea was, that a contract would not be approved unless the price of \$1 25 per acre was paid or secured; but as information from the Creek country induced the belief that many of the tracts were not of this value, the above duty was thrown upon the agent, as securing to the Indian a fair equivalent for his reservation. In all cases, of whatever value the land, it must be ascertained as far as practicable, and that must be paid or secured to the owner before the certificate was signed. No patent could issue until the payments were complete under the treaty, whose provision was reiterated in the regulations, and in both we find it asserted that the approbation of the agent shall in no case be final until sanctioned by the President. The foregoing, with the general form of the certificate to be made, and one or two matters of no consequence in this paper, made those rules and instructions which were first devised and approved for enabling the Creek reservee to dispose of his property for a full consideration. They found the agent's path marked out on untrodden ground, by the best reflection; but experience soon suggested that if the payment of the price was to depend on Indian acknowledgment of satisfaction, the sluices of fraud would be opened so widely that the stream would cover the whole territory; and on the 18th December, 1833, a supplemental regulation was adopted, requiring the payments to be "made in the presence of the approving agent, except in the very few cases where the Indian may be prevented by illness or inability from appearing before the agent. But such cases must be proved by the most unexceptionable evidence, as well as the payments made under them, and the circumstances must be distinctly stated for the consideration of the President."

To these were added the additional regulation of the 7th March, 1836, founded on fraudulent treatment of the Indians, of which there will be seen too much evidence in this report, and the opinions in detail to which it is preliminary. By this last instruction, the agent could certify no sale except in the public square of the town to which the reservee belonged, where, in the presence of the chiefs and other Indians, he was directed to ascertain the identity of the owner of the land, and convince himself that the bargain was just and fair, fully comprehended by the Indian, and that he was paid for his property according to the existing regulations.

If the Creek was unable, from sickness, to meet the agent, he was instructed to visit him at his dwelling, in the presence of one or more chiefs, when all the circumstances being ascertained which the agent was bound to know in the public square, he might certify a contract.* It would be difficult to imagine a system more wisely arranged for the honest and beneficial fulfilment of our covenants, more perfectly adapted to the protection of Indian incapacity, or more carefully devised for the exclusion of fraudulent operation upon the interests that we had undertaken to preserve. Even now, with all the instruction of the past, and looking back

* This direction was virtually given as early as 28th April, 1835. Vide app. K.

over all that has happened, it is thought that more prudence could not have been exercised by the General Government than the whole course of this unfortunate business under the treaty, and the agencies established for approving sales, exhibits. Frauds, so long as there were those to practise them, would seem to be inseparable from all the circumstances of Indian character and Indian ownership, and the peculiarities of the occasion.

The certifying agents were engaged in the discharge of their duties throughout the year 1834, and the temptations to make advantage by imposing on the reservees were so alluring to corrupt men, that complaints of fraudulent practices were made as early as March of that year. These allegations were renewed from time to time, and the agents as often urged by the War Department to increased vigilance and activity in the prevention and detection of such disgraceful acts; and they were informed that "if any instances of individual fraud, permitting the interference of the Government, can be pointed out, they shall be investigated; and, if requiring and admitting correction, they shall be corrected." Artful schemes and devices gave impunity and success to bold bad men, whose profligate and wanton conduct not only extended its operations, but became utterly regardless of public observation and opinion, until at length, in the spring of 1835, every prudential restraint was set at defiance, and acts which should make men cover their faces and shun sunlight, came to be the boast of these spoilers of Indian property.

The justice of the complaints made is fully substantiated by letters from certain Indian chiefs to the Secretary of War, dated the 16th March, 1835, (app. D;) from the same and other chiefs to Dr. R. W. McHenry, dated 23d March, 1835, (app. E;)* from L. Tarrant Esq., to the Commissioner of Indian Affairs, dated 24th March, 1835, (app. F;) from Dr. McHenry to the same, dated 25th March, 1835, (app. G;) from a large number of the inhabitants of Chambers county, Alabama, to the President of the United States, dated 8th April, 1835, (app. H;) and the proceedings of "a meeting of the citizens of Macon county, and its vicinity," held on the 19th May, 1835, (app. I.) These frauds, though most numerous in one, appear to have been perpetrated in all the agencies open early in 1835. In the one polluted by the greatest depravity, and in which the agent, Dr. McHenry, stated that 19 out of 20 cases certified by him were fraudulent, a justice of the peace, one Henry C. Bird, was procured, who, possessing no moral sense, and lamentably wicked, made and signed officially affidavits, in which he left blanks for all the material facts and names, that they might be filled up at the pleasure of the holder, in consummation of base designs; thus rendering himself infamous, while he dishonored his commission and his State. In consequence of the representations so forcibly made, the Secretary of War, by his letter of the 28th April, 1835, (app. K,) directed the agents to suspend the certification of contracts until they were otherwise instructed, and to give public notice of such direction. They were further requested to investigate the alleged frauds; and were informed that the President would withhold his approval from all contracts before him, until their fairness could be ascertained. The agents entered upon the duty assigned them, and examined sales alleged to be fraudulent in the course of the summer of 1835. Be-

* A copy of which was forwarded to the Commissioner of Indian Affairs, through L. Tarrant, Esq.

fore, however, their labors were completed, and in consequence of additional representations to the Government, Colonel John B. Hogan was, on the 9th September following, specially appointed to the duty of further investigation in the Creek country, with the aid of the several agents in their respective districts. The modes of practising deceptions upon the Indians were as various as the ingenuity of men, but consisted chiefly of two: 1st. By teaching one of them who had sold his land, or never owned any, to represent another, who was the holder of a reservation; he learned his name, and that of his tribe or town where he lived, the situation of his dwelling, and of the town-square and council-house, and such other circumstances as the agent would be likely to inquire into, with the view of identifying the reservee; and, thus prepared, he was presented before the agent, and, answering readily the usual questions, the officer was deceived, the contract certified, and the proprietor of the land defrauded. The wages of this combined iniquity were generally \$5 or \$10. 2d. By taking the true Indian before the agent, and in his presence paying the consideration-money, which was afterwards obtained from him by the fraud or force of the pretended purchaser. Colonel Hogan prosecuted his inquiries vigorously, and on the 22d January, 1836, made a report of their result. This return, embracing 656 cases in Dr. McHenry's district, was not made in such form and with such details as would enable the President to perform the duty enjoined on him by the treaty, except in eight cases. That instrument imposed upon him the necessity of deciding upon the validity of a contract, on a view of all the circumstances attending it. It was represented that frauds to a very great extent existed; the investigation was ordered in consequence; and, to warrant him in concluding that a transfer was void, it was obviously necessary that he should be guided by evidence, and the exercise of a sound discretion upon it, and not by the naked opinions of others. The report contained no such testimony, but the mere expression of an opinion that the purchases were invalid. Some of the cases were reported as "given up" by the purchasers, which seemed to form an exception to the above general remark. The report was, on the 11th March, 1836, by letter of that date (app. L) to Messrs. Hogan, Burney, and Anderson, committed to those gentlemen for re-examination. In the mean time, and during the months of January and February, 1836, Colonel Hogan pursued his investigation industriously in General Sanford's district; and a book marked B, of which a copy was furnished by the Indian Bureau to the commission, contains the memoranda made by Colonel Hogan, apparently on the ground from which it is presumed he intended to draw up his report for the Department; but it does not appear that such a report was put into form, or transmitted to the Government. In virtue of the instructions of 11th March before mentioned, Messrs. Hogan, Burney, and Anderson commenced their examinations, and were making rapid and useful progress in them, when the hostilities on the part of the Creeks broke out, in May, 1836; and their further operations ceased, by letter from the Secretary of War, of 19th May, 1836, (app. M,) stating the impracticability of proceeding with their labors, and requesting a report of what they had done. That report was made by those agents on the 10th June, 1836, embracing 106 cases, and was approved by the President on the 7th July following.

We left the agents on the 28th April, 1835, under a recall of their authority to certify contracts. On the 18th September, 1835, Leonard Tarrant, Esq. was authorized to resume the certification of contracts by letter of that date from the Commissioner of Indian Affairs, (app. N;) and on the 26th September, 1835, by letter from the same officer to Dr. McHenry, (app. O,) he was directed to suspend all recertification of sales prior to "28th April last, as also certification of sales since that day." In order to understand why it was necessary to suspend Dr. McHenry's powers, which do not appear to have been renewed, it is proper to observe that a letter had been written to him by the acting Secretary of War on the 18th June, 1835, (app. P,) which he construed into a revival of his authority, though it was not so intended, and acted accordingly. The certifications made under this supposed renewal of power it was deemed advisable to recognise, if otherwise valid, which was done by letter from the Commissioner to Dr. McHenry of October 14, 1835, (app. Q.) On the 28th October, 1835, a communication was addressed to L. Tarrant, Esq. and Dr. McHenry, (app. R,) directing them to resume their duties as certifying agents, but expressly excluding recertifications. This letter would seem to have been required only for Dr. McHenry, as Mr. Tarrant's powers were restored on the 18th September; unless, indeed, it was for the special direction not to recertify, which it will be seen in another part of this report there never was any authority to do, although a few cases so recertified appear to have been recognised as the acts of the agent. The services of Dr. McHenry, as certifying agent, were dispensed with on the 10th January, 1836, by a communication of the Commissioner of that date, which it appears by a letter from Colonel Hogan to the Commissioner of 22d January, 1836, Mr. McHenry received at Fort Mitchell on that day. Thomas Crawford, Esq., of Alabama, was appointed his successor, but I am not aware that he ever acted. General Sanford was elected to Congress, and ceased to be a certifying agent in the spring of 1835. When Major Thomas J. Abbott was appointed to that office, I do not know precisely, nor is it important here to ascertain, but it was after January, 1836; and on the 20th May, 1836, the powers of L. Tarrant, Thomas J. Abbott, John Staton, Esquires, and Colonel John B. Hogan, as certifying agents, were withdrawn on account of the Indian hostilities, by letter of that date, (app. S.)

On the 19th May, 1836, General Thomas S. Jesup was assigned to the command of the troops employed to suppress Indian hostilities, and certain powers were conferred on him in relation to the sales of Indian reservations. In his letter of general instructions of that date, it is said, "It is impossible, from the want of time, to cause abstracts to be prepared showing the sales that have been made by the Creek Indians; and therefore no directions can be given for any definite proceedings upon that subject. There is no objection, however, in the cases of those friendly Indians, to permitting them to sell agreeably to the established regulations, a copy of which you will herewith receive, if the purchaser can satisfy himself that no contract has been heretofore made for the sale of the land. But if this is done, he must do it upon his own responsibility; for if a previous valid contract has been entered into, the first purchaser must hold the land." He was also authorized to "appoint a certifying agent to certify contracts, should any be entered into as above mentioned." Under the power thus conferred, Major Thomas J. Abbott and Lieutenant J. A. Chambers,

United States army, were selected as certifying agents for one section of the Territory, and Leonard Tarrant, Esq. for the other; and they certified contracts in the summer of 1836.

At the risk of being thought tedious, I have thus endeavored to present a connected account of what took place in execution of our stipulations in the treaty of 1832, and of the efforts made by the Government to prevent and correct frauds in the sales of Creek reservations prior to the resolution of the House of Representatives of the United States of July, 1836, and to the constitution of a commission under it. This was deemed proper, because of the variety and complexity of the examinations and investigations submitted to the commissioners, which are of such intricacy, and so shrouded by documents and correspondence, and confusion of date and detail, that it is a work of immense labor to take up the mass and struggle through it—a labor perhaps inconsistent with your other important duties; but if it shall be your pleasure to undertake it, the hope is indulged that your inquiries will be facilitated by the foregoing review, which has been as much condensed as seemed to comport with making it intelligible.

The commissioners, in pursuance of their instructions, met in the Creek country in September, 1836, and organized the board. About the time of their arrival, the great body of the Indians emigrated, and a band of warriors was about to go into the military service of the United States in Florida, leaving in "the nation" a small party, consisting chiefly of old men, women, and children, very many of whom were the wives and relations of those who had engaged in our service. To conduct the investigations on the plan that had been theretofore adopted, of meeting the Indians in their public squares, and in the presence of the chiefs and others, upon notice to the claimants of the reservations by purchase, was impossible; and the commissioners determined upon certain regulations, dated the 17th of September, 1836, (app. T.) which they caused to be published in the newspapers, and handbills containing them to be put up at public places, and to be circulated, so as to give the widest and most extensive notice of their contents. They considered it necessary to make additional regulations on the 17th of October, 1836, (app. U;) to which also the utmost publicity was given by the same means. Various other rules, of a more or less general character, as necessary machinery for shaping their inquiries and guarding the just rights of all parties, were adopted from time to time, which need not here be more particularly referred to. Before the proofs and evidence which bear upon numerous contracts are spoken of, it will be proper to turn to the instructions of a general nature that have been given to the commission since its organization. A letter from the Commissioner of Indian Affairs, of 17th February, 1837, laid down the following rule: "In the further progress of your investigations, it is the opinion of the President that you should devolve the burden of proof on the first purchaser. This will exclude, of course, all examination of cases in which a tract has been resold, but not recertified after reversal, and in which it may have been resold and recertified without authority on the part of the agent."

This instruction was explained by a communication from the same officer, of June 21, 1837, in which he says: "In explanation of the instructions of February 17th, I have to observe, that the object of the contract with General Watson was to convey to him all the lands in

McHenry's district, the first contracts for which had been contested, unless the holder of the contract established its fairness and integrity. As in many instances McHenry had, without authority, set aside the contract first certified by him, and certified another for the same land, it became necessary to direct your inquiries to the one or the other. Obviously the first contract was, and is, properly the object of investigation; if that was or is so successfully impeached that the President has not or could not approve it, Watson's title would attach itself to the land. It was for this reason, and the reference to this class of cases alone, that the passage in the letter to you of the 17th February, which you have quoted, was written."

On the 8th of September last a communication was received by the board from the Commissioner, conveying the views of that officer, which were approved by the Secretary of War, and embraced the following instructions: That the commissioners "include in their report only the cases in which they have instituted inquiries into unapproved contracts, on representations, or their belief of fraud in the original contracts. This report will include all contracts, upon the validity of which it is now the imperative duty of the President to act; and in it will be embodied the substance of the representations or the evidence on which they founded a belief of fraud that induced an investigation, and the evidence adduced in the course of it."

"That it is the opinion of the President the validity of approved contracts, except such as are still in the possession of the Department or its agents, if it be disputed, must be determined in any mode the parties may elect; but the Executive will interfere no further than to withhold the patents, until the question of title is determined." And as to those approved contracts which are still in the possession of the Department or its agents, the commissioners were instructed to "imbody in a separate communication all the evidence and facts they may have collected, going to show fraud to have been practised" in them. Which last instruction was thus qualified: "Provided that they take cognizance of cases of approved contracts, only when specific allegations of fraud in a particular contract are made to them by respectable persons."

Considering that ample opportunity had been afforded to parties to set up or impugn contracts, the farther instruction was given, "that no allegations of fraud presented after the 16th of October next should be examined by the commissioners." And on the 21st September, 1837, additional instructions were received, by which the board was informed that "the instructions given to the commissioners on the 17th February last, to devolve the burden of proof on the purchaser, ought to be applied only in cases in which they shall determine to institute an investigation, in consequence of representations of fraud made to them by credible persons, or the exhibition of evidence sufficient to induce them to believe that fraud has been practised. It appears to me that it would be assuming too much, and taking too great a latitude, to consider all contracts since February, 1835, fraudulent, for the single reason, that many made since that date have been shown to be of that character. Unless, therefore, other evidence bearing upon a particular case be adduced before them, it will be considered that the contract is not fraudulent, and may be presented to the President for his approval."

Many other instructions involving subordinate considerations and mat-

ter of detail, have been transmitted to the commissioners, but a reference to them is not material in this place.

Under the general regulations before adverted to, a great number of memorials, counter-memorials, and answers, have been filed from time to time before the board, alleging purchases to be fair or fraudulent, according to the interests and opinions of the parties, and their supposed ability to sustain or overturn contracts by proofs. A large proportion of these cases form the detailed report herewith submitted.

When the parties litigant had made their several representations, applications were made for rules to take testimony, of which the mass pertains to particular cases, in which the evidence adduced was filed; and with the report upon them, respectively, will be found a compend of it, together with the opinions of the commissioners.

It is shocking to reflect on the disclosures elicited. They embrace men of every degree. Persons, heretofore deemed respectable, are implicated in the most disgraceful attempts to defraud those who were incapacitated from protecting their own interests; whose presence, so far from being any interruption to the plundering of themselves, was sometimes sought, as their instrumentality was used to effect their own ruin. This conduct, derogatory to civilized man, was not inaptly termed "land stealing." The commissioners cannot believe they have been able to reach all the gross frauds put upon the simple Creek; but they hope they have been useful to as great an extent as, under the circumstances, could reasonably have been anticipated. The absence of the Indians from the territory deprived the board of their aid in their inquiries; and their attention was necessarily directed to the discovery of white men who were acquainted with the transactions of the dark winter and spring of 1835. They were so fortunate as to meet with some witnesses who had the knowledge which the commissioners were persuaded existed, and the disposition willingly to disclose it on oath. Among those who thus stepped forth to breast the current, was Arnold Seale, a respectable citizen of Alabama, whose deposition was taken on notice to the gentlemen that appeared as counsel for the persons whose conduct was assailed by the witness, (app. W.) Supposing that the force of this deposition might be weakened, or explanations of it furnished by the witness himself, he was again examined on interrogatories filed by the parties implicated; and in justice to them a copy of the interrogatories, and of his answers, is also furnished, (app. X.) These depositions were intended to relate to all the contracts to which they applied, were general, and made so intentionally, and were so understood and agreed to be on all hands. The taking of the second deposition shows it. The acknowledgment of notice of taking the first, reads, "Notice of time and place of taking the written deposition acknowledged, and form waived," signed by the same counsel's name, without designating himself as the attorney of any one or more claimants. So the notice to take the second, addressed to the district attorney, said, "Please take notice, that on Tuesday, the 14th day of March instant, at the house of Arnold Seale, in the county of Chambers, between the hours of 9 o'clock, A. M. and 10 o'clock, P. M., the deposition of the said Arnold Seale will be taken, to be read before T. H. Crawford and Alfred Balch, commissioners to investigate frauds," &c., signed by the same counsel in the same way. The interrogatories are signed by another gentleman as "claimant's attorney." The interrogatories themselves establish that all

those implicated took part in them. Neither the acknowledgment of notice, the notice itself, interrogatories, nor depositions, are entitled or were filed in any particular case; nor could they be, for the latter were not meant to be so taken, but were designed to cover all the ground over which they would reach; and to place the matter beyond all doubt, the first deposition of Arnold Seale was taken, as declared in its caption, "to be read in all cases to which it may apply, which are now pending before Thomas H. Crawford and Alfred Balch, Esquires, now sitting," &c. The depositions of John Garrett and John Taylor (app. Y and Z) were taken under the same circumstances, with the same intention, and on the same notices, and were equally general in their character. Garrett was cross-examined by the same counsel; and in the heading of Taylor's deposition, it is stated that it was "to be read in evidence in all cases to which the same may apply, and which are now pending before Thomas H. Crawford and Alfred Balch, Esquires, now sitting," &c. And the deposition of Edwin E. Bissell (app. AA) was also taken and designed to be used generally; and on it is endorsed, by the same gentleman who received and gave the other notices referred to, "I acknowledge service of notice of the time and place of taking the within deposition, and consent that the same may be read in any case to which it may apply, and waive form," declaring expressly the general authority of the counsel, and the understanding of the persons who held the contracts, of the use that would be made of the several depositions mentioned, which were all taken under the same instruction to the acting district attorney, and about the same time. I have been thus particular in what, at first sight, might seem immaterial matters, because the foregoing evidence is of the utmost consequence, and upon it rest many of the opinions that the commissioners shall spread before you.

These depositions disclose acts that make the blood of a just man mount to his cheeks for shame that he and the perpetrators of them belong to the same community. The recounting of them by the witnesses displays their deformity in all its length and breadth and darkness. I would not deepen their color by a shade, if I could; and their enormity makes it impossible, even if I had the disposition.

It was known that letters had been written by certain individuals charged with wrongs upon the Creeks, and it was very important, in the view of the commissioners, to possess themselves of the originals, if possible, that they might serve the double purpose of reaching the writers in their contracts, and furnishing authentic evidence of whatever general plan or arrangement they might disclose. These letters they obtained, and they are from Eli S. Shorter, now deceased, to Doctor John S. Scott and Messrs. M. M. & N. H. Craven, (app. BB;) from the same to Messrs. John S. Scott, E. Corley, M. M. & N. H. Craven, (app. CC;) from Benjamin P. Tarver to Mr. M. A. Craven, (app. DD;) and from Elijah Corley to Scott and Cravens, (app. EE.) In the record thus made by some of these unprincipled and reckless men of their own infamy, we have confirmation out of their own mouths of the truth of all that has been alleged and otherwise proved.

The course pursued by several of the claimants of lands under contracts, which are reached by the testimony mentioned, establishing that at, about, and near the dates of those instruments, the holders of them were engaged in defrauding the Indians, is evidently founded upon the idea that as there is, in many instances, no evidence of the fraud in the

particular case, it cannot be reversed. The instructions quoted forbid an investigation, unless there is reason to believe there has been fraud ; but where that belief exists, the examination is to be made. And who can doubt that where several frauds were committed by an individual on a given day, he would perpetrate as many more as opportunity enabled him to effect at the same time ; or that a fair presumption arises against his integrity in January, who is proved by name to have been extensively engaged in frauds in February, and against those contracts into which he uses exertions to prevent an investigation, of which he has had full notice, and gives his attendance accordingly ? Supposing that such presumption is justified, what ought to be the mode of proceeding, and where ought the burden of proof to be cast ? I hold that whenever you suspect the fairness of a contract, or choose to insist upon proofs, you have a clear legal right to call upon the claiming party to maintain his purchase by evidence of all essential particulars ; and that where there is a well-founded belief that the individual preferring a claim has been engaged in frauds about the date of his exhibit of title, he is bound, on every principle, to satisfy those who are to pass upon his pretensions of the fairness of the special case. The general character of some of the proofs taken has been already shown, and that, by the consent and design of all parties, they were made to apply to all cases fairly affected by them. They are as properly used in each of such cases, in my judgment, as if sworn to and exhibited in them respectively. The question is a most important one, and I therefore ask to be indulged in setting forth the views on which numerous opinions, to be presented herewith, are grounded. The first branch of the above position is not intended to be insisted on here as a distinct proposition, because it is at variance with instructions ; and if, in maintaining the last, and to exhibit it in a stronger light, I shall state some reasons for the correctness of the former, I request that they may be considered as illustrative only, and not as proceeding from any disregard of the instruction, or want of respect for the opinion of the high functionary from whom it proceeded.

Is the position tenable, that proof of the execution of the contract, and of the agent's certification, entitles the claimant to call upon the Indian for evidence of unfairness and imposition in obtaining the contract ? Shall those who are implicated by the testimony referred to, present contracts embraced within the corrupt periods established by that testimony, and be permitted to fold their arms and demand their confirmation, unless their helpless opponents shall fix the imputations upon them in each particular case ? Let us inquire.

What was the authority of the certifying agent ? He was empowered to certify contracts made by the Creeks for the sale of their reservations, under the treaty of 1832, to the President of the United States, who alone, by the 3d article of the treaty, and the regulations prescribed for the government of agents, could give force and efficacy to the sales by his approval. By the return of these contracts to the War Department for further action, the power of the agent is spent, but still they are incomplete ; and to entitle them to the sanction of the President, it must appear that all the requisitions of the treaty had been complied with, and the regulations conformed to. Is it not arguing in a circle, to say that the execution of the paper and the certificate of the agent establish all that is required, until the contrary is shown, when the allegation that they are vicious is

the ground of this investigation? An instrument full and perfect on its face, to which every name has been affixed that is necessary to give it validity, and which bears about it all official ratification, might be regarded as *prima-facie* evidence of the verity of what it contained—it would be so; as for example, if, by any mistake, a contract should receive the President's sanction which did not deserve it, in a judicial inquiry it would only be necessary, in my opinion, for the holder to produce it in the first instance with proof that it had been so approved, because it had received the confirmation which the treaty had made requisite to its validity. In the case in hand, the paper with the proofs has no such sanction; it is imperfect, and the last seal is withheld, because it is at least doubtful whether it is entitled to receive any such impress. It is not a valid instrument, nor is it binding, until it is approved by the Executive. Shall any contract be efficacious to give the man claiming under it the vantage-ground, so as to throw the burden of proof on his Creek opponent, when, by the very law of its existence, it has not and cannot have any validity at present? and the inquiry, in which it is sought to give it this operation, is, whether it ever shall have that force. "Where a deed is executed under some special authority which prescribes the mode and form of execution, the execution will not be valid unless these requisites be observed. In the execution of a power, all the circumstances required by the creators of the power, however unessential and otherwise unimportant, must be observed, and can only be satisfied by a strictly literal and precise performance."—*Rex vs. Anstrey*, Easter term, 1817; *Hawkins vs. Kemp*, 3 East. 440. The agents were acting under "special authority, which prescribes the mode and form of execution" of the contracts they were to certify. The value of the reservations was to be *paid, in their presence, and to the true owners*. These were the leading requisites insisted on by the Executive, who created the authority to certify. Were they conformed to? A compliance is necessary to the efficacy of the certificate, and it is said the certificate proves the compliance. The position is, that a certain instrument has the effect of establishing that particular acts were done, when, to give the paper itself any force, it must be first shown that these acts were performed. The argument is urged on the ground that the agent was accredited by the Government, to whom his report should be evidence of what he asserts. If the contract were unattacked or unimpeached, the argument would be plausible. But doubts are raised upon the fairness of the transactions to which that report relates, by proofs of the grossest frauds by testimony that at, about, and after certain periods clouds overshadowed the great body of the purchasers. The certificate of the agent is not stronger than any other official communication made by him to the War Department, nor better entitled to its confidence; and Dr. McHenry avowed officially the belief that nineteen out of twenty contracts, certified by him in the winter and spring of 1835, were fraudulent. General Sanford, in a letter to the Secretary of War, of 15th May, 1835, said, there is not a shadow of doubt "of the existence of fraud, of very great fraud," and "possibly, in the latter days of my office," "it may have been successfully practised on myself as well as others;" and L. Tarrant, Esq., in a communication to the Commissioner of Indian Affairs, of 24th March, 1835, speaking of Dr. McHenry, remarked, "frauds have been practised upon him to a great extent—perhaps to a much greater extent than they have been upon me; but with all the vigilance I have

been enabled to use, they have to some extent been practised upon me; and if the same number of contracts had been certified by me, I am not sure that frauds to a great extent might not have been practised upon me. I believe that there is an organized plan of operations to deceive the agents, and to introduce the wrong Indian to certify or approve contracts." Under these circumstances, such certificates cannot be allowed on any principle to throw the burden of proof upon the alleged seller. To give them this effect, would be to close one's eyes upon the light of the sun, to suffer the triumph of fraud over simplicity and ignorance, and to compel the commissioners to advise the ratification of what their judgments tell them do not deserve confirmation. To place the executive branch of the Government in such a dilemma would be a poor return for its confidence, and more, would be unjust to myself and to my sense of integrity.

What are the proofs alluded to? They establish that during the months of February and March, 1835, in General Sanford's and Dr. McHenry's districts, fraud, chiefly by personation, was carried to a most appalling extent. It was difficult, almost impossible, to guard against it. The greatest facilities existed in the Indian character for the successful operations of the designing. The agents could scarcely escape imposition, with all the attention it was practicable to give to their duties, and it would have been remarkable if they had escaped it. Near the town of Cusseta, in which Dr. McHenry certified, Indians were collected in large bodies, amounting to 400 or 500; and from that to 1,000 were encamped in the woods, which, in the language of one witness, "appeared to be full of them," and were fed by and under the direction avowedly of the agents of those to whom the largest number of contracts was certified. It is testified that one of those agents boasted he had one hundred and seventy-two contracts closed during the last week the agency was open, and unhesitatingly stated that any Indian, who could pass the examination of the certifying agent, was taken before him, and made to play his part in this solemn and wicked farce: that the witnesses saw many contracts certified, and afterwards were present at the identification of the true reservees by the chiefs at the investigations, and the latter were not the parties to the contracts: that the principal purchasers were present immediately before and at the time these frauds were perpetrated; that all regard for appearances even was abandoned, and no attempt at secrecy in their movements was made; and that threats and menace were used by some of those engaged in this business, against the persons who exposed their unprincipled proceedings: that early in March, 1835, "the land-stealers were crowding into the office by droves, and certifying contracts very fast, and it appeared as though they would steal all the Indians' land; they seemed to carry on the business in sport:" that a toast was given in a crowd by one of those concerned in these nefarious practices, "Here's to the man that can steal the most land to-morrow without being caught at it;" and that such a flood of fraud inundated the agency, that Dr. McHenry "closed his book" and "refused to certify for one day." It further appears that various attempts were made to buy off those who expressed their indignation at these transactions, and were exposing and likely still further to expose them: that at one time an arrangement was verbally agreed on, by which the fraudulent contracts were to be given up, and that when it was reduced to writing it was carried to Columbus, to be executed by those who were parties to it, one of whom objected to signing it "for the reason that it would be an

open confession of having stolen the land, and that they had some regard for character :” that in the month of February, 1835, it was reported “that persons were stealing land at Columbus before General Sanford;” that while the arrangement before mentioned was negotiating, a leading purchaser’s remark, “that the plan of stealing had been adopted to bring about a reaction, and cause the true owners to sell their lands,” was understood by the witness to apply to both Sanford’s and McHenry’s districts; that several of those concerned in them admitted that “there were a great many stolen contracts” in both districts; and that these transactions were embraced within certain dates, believed to be in and from and after February, 1835; that even some of the very first contracts certified were acknowledged to have been fraudulent; that a present to an unprincipled interpreter, and five or ten dollars to the pretended owner, was the common price of a land transaction, and the opinion openly proclaimed that money was a curse to the Indian, that a small sum was as advantageous to him as a large one, and that one of the chief managers and contractors said, that if witness would go with him “up to McHenry’s, he would show him how they had closed the business in Sanford’s district, and they were determined to close McHenry’s in the same way,” which the witness understood to be by “the personation of one Indian for another.” He did not believe that the plan was possible for a day or two, when he went up to McHenry’s office, where, from the course pursued and what he saw, he became perfectly satisfied that these men were basely engaged in personating Indians, or, in other words, in stealing land. A letter was written by a large contractor, dated 28th January, 1835, saying that the Indians in General Sanford’s as well as in McHenry’s district had “but one moon in which to save their lands,” and that “the great struggle should be for the most valuable lands;” and several letters were written by the same individual and others, openly avowing the grossest frauds and the intention of perpetrating them; and many of those engaged in procuring fraudulent contracts were active when Col. Hogan, in January and February, 1836, was pursuing his investigations in Sanford’s district, in dissuading the Indians from complaining, and using every means to prevent a full examination, to cover the frauds, and to render the efforts of the agent to reach them unavailing.

It is thus placed beyond doubt that the month of February, and the after time in the spring of 1835, exhibited scenes at which principle revolts and the heart sickens.

The investigations which were subsequently made by Dr. McHenry, by Colonel Hogan, and by the two together, and by Colonel Hogan in conjunction with Messrs. Burney and Anderson, were commenced after the fullest notice; held publicly, with the amplest opportunity for all interested to attend, and in the actual presence of many of the alleged purchasers. Each was called on to substantiate his claims, and, under these circumstances, and with the fullest lights, many contracts were given up, and many reported and marked for reversal on testimony, and on personal examination, especially by Colonel Hogan, whose investigations, as already mentioned, were not confined to McHenry’s district.

To give to the view I entertain, and have expressed, all the force of which it is capable, it may not be improper to advert to a still broader foundation for the opinion that the *onus probandi* rests on the purchaser. It is a common principle of equity, “to protect those who are unable to

protect themselves, and of whom an undue advantage is taken." (1 Story's Com. on Eng. Jurisp. 149.) The situation of the contracting parties is peculiar. On the one side are civilization, wealth, and business capacity; on the other, ignorance, total incapacity for business of any kind, and unacquaintance with our language; circumstances sufficient to bring into full exercise the above chancery principle. But, in addition to all this disparity of circumstances, the Indian, in most cases, was resident in Arkansas. The little chance there would be for information from him is cut off. A great judge (the late Chief Justice Tilghman, of Pennsylvania) has said, that necessity, moral or absolute, is a sufficient reason for dispensing with the rules of evidence. If I could not otherwise elicit truth, I would adopt and act on that principle, under the special circumstances, on this occasion; nor would there be any just ground of complaint or hardship on honest purchasers, who can easily show the fairness of their contracts, the payment of the money, &c.; or, if they fail, the fault will rest with themselves. Agreements on which large sums are paid and received, ought not to be difficult of establishment, if they deserve to stand. Ordinarily, proof of the execution and delivery of a bond is *prima-facie* evidence of the right of the man to whom it purports to have been made, to recover on it. Nor, although there must be delivery, is any particular form required: but proof of the mere execution will not do; evidence of delivery, direct or by implication, must be adduced. In some situations, and between men of business, possession would be held to be evidence of delivery; in other circumstances more would be required—the rules of evidence adapting themselves to the parties and the facts, and having elasticity sufficient to compass the ends of justice. But do not execution and delivery include the identity of the person who signed the bond with the individual charged to have done so? Certainly not, and this under ordinary circumstances. What is the condition of the Indian? He is ignorant and imbecile. He can only convey under the supervision of a Government agent, and such contract is not valid until approved by the President, which presupposes the payment of the purchase-money. If, then, it is necessary to prove the identity of the obligor with the man sued in common life, the principle is conclusively established, by which the purchaser shall be compelled, by the change of circumstances, to do not only that, but to go a step further, and prove what is requisite here to the confirmation of the contract—the payment of the just value of the land conveyed. The bond in the case put is good *prima-facie* evidence of indebtedness, without evidence that the consideration was paid, because the law makes the bond valid without it; but, in these Indian contracts, the law under which they were entered into makes the payment vital. So much for legal principle, and the reasoning that grows out of it; and although, in my judgment, they appear to be conclusive, I am happy to be sustained by authority. "Where the subscribing witness to a bond stated that he saw it executed by a person who was introduced by the name of Hawkshaw, (the name of defendant,) but was unable to identify him with the defendant in the action, the plaintiff was non-suited." (Parkins *vs.* Hawkshaw, 2 Starkie's C. 239; 3 Eng. Com. Law Rep. 332; 1 Starkie on Evid. (5 Am. ed.) 323, top page 287.) The case of Hildreth *vs.* Sands (2 John. Ch. Rep. 34, 44,) arose out of a conveyance of land alleged to be fraudulent, and the chancellor said "There is no proof that the price was paid, or that any voucher or security was taken as evidence of the debt," and fraud may

be inferred from this circumstance. These cases cover the whole ground, without adverting to the fraudulent practices put upon the Indians. I am, therefore, of opinion that the proof should come from the purchaser, which is necessary to the enforcement of his contract. But when we turn to the facts, that the agent was imposed on by the production of one Creek who assumed the name and character and property of another, it will be seen at once how indispensable to justice it is, that he who is charged with instigating the miserable Indian to this dishonesty, and claims to have bought from the true owner of a reservation, should show it, and that he paid him. It must be perceived that the real questions are of identity and payment. It is not wished to ascertain whether a certain paper was executed, but whether the man who did sign it, and called himself A B, was the real A B; and if so, whether he received a full price for his land, which was essential, under the treaty and regulations, to make his contract valid. I have thus, at more length than may be thought necessary, given my views on this interesting topic; but a less full exposition of them would not have satisfied my sense of duty.

The report of Colonel Hogan's examinations in Dr. McHenry's district, as has been before stated, was not acted on by the President, except as to a few cases, for the reasons previously herein given. In relation to the contracts included in it, we are instructed to require the claimants to support them. The book B, of the same agent, containing notes of his investigations in General Sanford's district, from which he designed, no doubt, subsequently to make up his report for the Executive, is not, in my judgment, evidence *per se* of its own contents. It consists chiefly of memoranda made by him from the mouths of the Indians—it cannot be said to be a report; nor do I know any duty by which he was bound to send it to the Government, nor how it found its way into the bureau of Indian Affairs; for most certainly it was not returned in conformity with any direction, instruction, or order, that I have seen or heard of. Still, when we consider that fair and ample notice was given to the purchasers of the examinations noted in this book, that many of them attended in pursuance thereof, and endeavored to stifle complaint before this honest and respectable agent, and prevent an exposition of whatever had taken place; combined with this and other testimony going to impeach a particular contract, or the general integrity of conduct of a claimant in his Indian purchases at and about the same date, it has weight, and may form one link in a chain of evidence sufficiently strong to fasten fraud on a contract so firmly as to authorize and require a call upon the holder of it for exculpatory evidence.

The instructions to the agents, and particularly the standing regulations, specially prepared and devised with a view to the protection of the Indians from wrong and injustice, prescribed certain duties, a substantial but strict discharge of which was necessary to the validity of sales. The performance of these requisitions they could not dispense with; nor, it is conceived, can the Government now render valid a contract where there is non-conformity to these directions in any essential particulars; for when they were adopted and promulgated, they became a law, not only to the agent, but to the Government that he served, on a fair compliance with which the Creeks have a right to insist. It was necessary, among other things, that the money (it being first ascertained to be a fair consideration for the land) should be paid in the presence of the agent; and if the price

agreed on was less than \$1 25 per acre, besides certifying that it was just, it was required that his certificate should "contain a general description of the tract, agreeably to the best information he procures. In all cases arising under this section, the circumstances will be particularly examined by the President, whose decision will be made as may appear to be just." In another part of the regulations it is said, where the land is sold below the minimum Government price "the agent will add to his certificate a statement that the land is proved to my satisfaction to be of an inferior quality, (being sandy, or marshy, or containing so many acres only which can be cultivated, or specifying any other facts which may have come to his knowledge, showing its quality,) and that I consider it worth only (here insert the sum)." Whenever these vital conditions of the validity of a sale are unfulfilled, or others of the same character are unperformed, a contract ought not to be, and cannot be, confirmed.

It only remains, in the general survey to which this report should be confined, before stating the principles on which the opinions in the respective cases are founded, to which you must look for particulars and details, to speak of recertified deeds. Where an original contract ought, in the opinion of the agent, to be reversed, he sometimes, before that opinion of his was further acted on, certified a new or second contract to another purchaser; and these were called recertifications. Are they valid? With certain exceptions, which will be presently noted, I think they are not, and cannot be sustained. The agents never had power under the general authority conferred to certify such second contracts, as appears by the letter of the Secretary of War to the Attorney General, dated 7th May, 1836, (app. FF.) and his answer thereto of 9th of the same month, (app. GG.) The War Department, as soon as it was apprized of the practice of recertifying, forbade it, (app. HH.) Afterwards this prohibition was qualified, and the agents were informed they might recertify where the buyer and seller were both willing to annul the contract, (app. II.) They were again somewhat restricted by instructions requiring the surrender by mutual consent to be reduced to writing, and signed by the parties, (app. KK;) and subsequently, the agents were directed to abstain from recertifying contracts "for the present," where the originals were "declared by the parties to be fraudulent," (app. LL.) In a letter from the Secretary of War to the Hon. D. H. Lewis, of the House of Representatives, dated 16th March, 1836, it is stated that "no authority has been given to recertify contracts, except in those cases where they have been set aside by the mutual consent of the parties." It is thus apparent that, unless the President had sanctioned the reversal of a contract, or it had been relinquished by consent of the parties, it could not be recertified; and that the power to recertify where there was a relinquishment, was suspended. On Colonel Hogan's report of 22d January, 1836, there were 205 contracts noted as "given up," and a number of these were recertified, and so marked on that report. These recertifications, where they otherwise conform to the requirements of the Government, are, I think, entitled to ratification, because of their recognition by the Department. In a letter from the Secretary of War to Messrs. Hogan, Burney, and Anderson, of 11th March, 1836, committing to them the report of Colonel Hogan of 22d January, for re-examination and revision, he speaks of those 205 cases, and of so many of them as were recertified, thus: "In the second class of cases, these given up, (by which it is understood the

purchasers, in the presence of the agent, agreed to surrender their contracts,) the Department will suspend its action for the present. They will, however, ultimately be reversed, unless something shall occur to call for a different course; and the recertified contracts will be approved, if no valid objection should be made to them." If, then, no valid exceptions are taken to this set of recertified cases, they would seem to be fairly entitled to confirmation.

The last class being added to the two previously noticed, we have all the exceptions to the general prohibition of recertifying.

The views here set forth, somewhat at large, as to the recertified contracts, are in exact accordance with the opinion of the Department, as appears by a report of the Commissioner of Indian Affairs to the Secretary of War, approved by him on 5th September last, and transmitted to this board as instruction, in which is the following: "That their inquiries should not extend to the validity of second contracts, unless the first had been set aside by the President, or the parties had consented, in writing, that the first should be set aside, or it was stated in the abstract of Colonel Hogan, transmitted to him and his associates, Messrs. Burney and Anderson, on the 11th of March, 1836, that the first had been given up." There are some contracts peculiarly circumstanced, and made under the instructions to General Jesup, which will receive separate consideration, and perhaps stand upon ground of their own.

The following general principles result from what has been stated, and governed me in forming opinions:

1. The abstract, or report of 22d January, 1836, of Colonel Hogan, was regarded as impeaching the several contracts reported for reversal by him, and as placing the laboring oar in the hands of the purchasers, although it was rarely found necessary to rest upon it alone, as other proofs reached almost every case on that return which the commissioners have as yet considered.

2. The book B, or examination of the same gentleman in General Sanford's district, taken singly, was not deemed sufficient to justify me in calling upon claimants for evidence; but, in connexion with other proofs, conducing to the belief that fraud existed, was allowed to weigh. Wherever it was unsupported, and other reasons were found—for example, non-compliance with the regulations—justifying a recommendation of reversal, my opinion rests on the latter.

3. The testimony of Arnold Seale, John Garrett, and John Taylor, establishing that certain individuals were actively, extensively, and openly engaged in the practice of the grossest frauds upon the Creeks at, about, and between certain times, and that many of the same persons, upon full and fair notice to attend Colonel Hogan's investigations in Sanford's district, did appear, and directed all their art and energy to prevent the Indians from complaining, using persuasion, money, fraud, and force for this purpose, a reasonable and just belief arose in my mind that all these individuals dealt fraudulently by the Creeks, and that my duty enjoined it upon me to require of them that their contracts, fairly affected by the evidence, should be substantiated by the exhibition of proofs in their favor; and, if these were not forthcoming, to advise the Executive that these contracts did not merit favorable consideration.

4. Where these persons or others have adduced evidence, I have given it a careful, and, I trust, impartial consideration; and contrasting it

with whatever proofs existed on the other side, came to the conclusion that appeared to my judgment to be just.

5. Into approved contracts the commissioners have not inquired, there being none which have not been delivered to the parties, that I am aware of, and those that have been are placed beyond their control.

6. Conformity to the regulations adopted by the Government for the guidance of the agents has been deemed indispensable. The War Department was constantly urging upon those agents the strictest regard for these requirements. They were framed for the safety of the Indian. The prescription of them was a command to obedience. In all important particulars, a departure from them has been considered fatal. There is one feature of them more essential, perhaps, than any other; a deviation from which, throws wide open the door of fraud, and as to which, unfortunately, there has been the greatest negligence—I allude to the description of the quality of the land, where the price is less than \$1 25 per acre. The word “pine,” or more generally the words “note—pine land,” are very often employed to describe the quality of the land. And what idea is thereby given of it? Pine land may be worth fifty cents, or twenty dollars per acre; and, in fact, these words are used indiscriminately where the land sold for 100, where for 200, and where for 250 dollars a half section. This disregard of the regulations could not be allowed, and such an attempt at description has been considered no compliance with the rule.

7. Recertified cases, my own settled convictions and the instructions to the commission concur in repudiating, except where the first contract has been reversed by the President, or been relinquished by the parties in writing, or marked on Colonel Hogan’s abstract “given up” and “recertified.”

8. Were there were omissions, not necessarily fatal to the contract, which could be traced to the negligence of the agent, and not to the fault of the party, amendment was allowed on the ground that the citizen should not suffer for the omission or carelessness of the public officer. The correction of all mere informalities is likewise recommended.

9. Want of authority in the agent to certify is absolutely destructive of the contract. The various letters, conferring, suspending, and revoking this power, were presumed to reach those to whom they were severally addressed, in twelve days; and where the validity of an act turned on the power to do it, that time was adopted as a general rule.

Further progress in this complicated business will be reported as soon as practicable.

All which is respectfully submitted.

T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT,
Secretary of War.

APPENDIX.

A.

Regulations for certifying contracts under the Creek treaty of March 24, 1832.

WAR DEPARTMENT, November 28, 1833.

1st. All applications for certifying contracts under the above treaty, in order to procure the assent of the President to the conveyance, shall be made in writing, and shall be accompanied with the written contract itself.

2d. If the payments are all made to the satisfaction of the Indian, and the fact is clearly established in the opinion of the approving agent, then an absolute deed from the Indian to the white person may be certified.

3d. But if the payments are not all made at the time the parties appear before the approving agent, then the contract must distinctly state the time and mode of payment, and the amount actually received.

4th. As a general rule, no contract will be approved unless a consideration equal, at least, to \$1 25 per acre is paid or secured to the owner.

5th. In all cases the agent will make such inquiry as may be in his power into the actual value of the tract; and if he believes that such value is not paid or secured, he will not certify the contract.

6th. As, from representations recently received from one of the commissioners appointed to make the locations, it appears that many of the tracts are not so valuable as has been heretofore supposed, nor probably worth the minimum price fixed for the public lands, the President does not think it just that that sum should be actually paid in every case. When, therefore, a less sum is agreed upon between the parties, the approving agent will endeavor to ascertain the actual value of the tract; and if he believes the amount agreed upon is a fair price, he will so certify; and his certificate will also contain a general description of the tract, agreeably to the best information he procures. In all cases arising under this section, the circumstances will be particularly examined by the President, whose decision will be made as may appear to be just.

7th. The agent shall in every case, where it is practicable, have an interview with the Indian, explain to him the transaction, and ascertain whether he understands and approves it, on a full consideration of the matter.

8th. When, however, the Indian cannot appear before the approving agent, in such a case the clearest proof must be adduced of the nature of the transaction; and the return must show the proof, and must also state why the Indian was not present.

9th. No patent will be granted until the whole payments are completed.

10th. Copies of the contracts, to be furnished by the parties themselves, will be retained by the approving agent, and the originals will be transmitted to this Department for the consideration of the President.

11th. The approval of the agent will in no case be final, nor will the title of the grantee be valid until the President approves the same. Possession may, however, be taken of the tract as soon as the agent certifies the contract ; but, in such a case, the party will be liable to removal if the President should decline to approve the same.

12th. A contract for any tract may be certified as soon as a proper locating agent shall assign it to an individual Indian; still, however, it is to be observed, that if the President should not confirm such location, the whole proceeding, with relation to it, will be void.

13th. The ceded territory must be so divided by the approving agents among themselves, that each may be confined in his operations within a given district, so that applications rejected by one agent may not be acted upon by another.

14th. The following is prescribed as the general form of the certificate, subject to such variations as circumstances may require :

I certify that I have examined the contract between A B, a Creek Indian, and C D, for the conveyance to the latter of [here describe the tract, agreeably to its designation on the plat of the township;] that the said A B has appeared before me, and, after the transaction was fully explained to him he approved the same. The sums stated to have been received by him were paid in my presence, (or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be.) I consider the price given, the full value of the land, and certify the contract for the consideration of the President of the United States.

Where the Indian is prevented by proper circumstances from appearing, then the certificate will be varied, so as to show those circumstances and the nature of the proof by which the payments are established.

Where the price agreed upon is less than \$1 25 per acre, the agent will add to his certificate a statement that the "land is proved to my satisfaction to be of an inferior quality, (being sandy or marshy, or containing so many acres only which can be cultivated, or specifying any other facts which may have come to his knowledge, showing its quality,) and that I consider it worth only [here insert the sum.]"

LEWIS CASS.

Approved, November 28, 1833 :

ANDREW JACKSON.

B.

Supplementary regulations, in addition to those approved by the President November 28, 1833, for certifying contracts under the Creek treaty of March 24, 1832.

WAR DEPARTMENT, December 18, 1833.

In consequence of a representation from one of the certifying agents that a construction would be put on the above regulations which would inevitably lead to the committing great frauds upon the Indians, in consequence of the facility of imposing on them, and the ease with which declarations or acknowledgments may be procured, the President is de-

sirous of guarding against such a result as far as in his power, and of securing to every Indian the receipt of a just consideration for his property.

The following additional and explanatory regulations are therefore adopted :

1st. The payments required by the 2d article of the above regulations must be made in the presence of the approving agent, except in the very few cases where the Indian may be prevented by illness or inability from appearing before the agent. But such cases must be proved by the most unexceptionable evidence, as well as the payments made under them ; and the circumstances must be distinctly stated for the consideration of the President.

2d. The contract described in the 2d article of the above regulations must be entered into subsequent to the location of the reservation.

3d. The form in the 14th article will be so varied as to omit the words " or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be ;" except in the cases described in the 1st article of these supplementary regulations, where the Indians are prevented by disability from personal attendance.

LEWIS CASS.

Approved, December 18, 1833.

ANDREW JACKSON.

C.

Supplementary regulations, in addition to those approved by the President November 28 and December 18, 1833, for certifying contracts under Creek treaty of March 24, 1832.

WAR DEPARTMENT, March 7, 1836.

No contracts under the Creek treaty will be certified or recertified after the receipt by the certifying agent of these instructions, except in the town to which the Indian reservee belongs. And for this purpose, the certifying agents will from time to time appoint days, by previous notice, on which they will attend in the public square of each town where contracts are to be approved. The certifying agents will, in the presence of the chiefs and other Indians, ascertain the identity of the Indian claiming the land, and such circumstances as may be necessary to show that the bargain is a just and fair one, well understood by the Indian, and that the payments have been made in a proper manner, and agreeably to the established regulations.

When, however, the reservee is disabled by sickness from appearing before the agent in the public square of the town, such agent may certify a contract after a personal interview with him at his residence, at which one or more chiefs shall be present, and at which his identity and the fairness of the bargain shall be ascertained.

Respectfully submitted for the consideration of the President.

LEWIS CASS.

Approved, March 7, 1836 :

ANDREW JACKSON.

D.

TUCKABATCHEE TOWN, *March 16, 1835.*

We, whose names are hereunto subscribed, being head chiefs of the Creek nation, humbly petition your intervention to stop fraud being practised upon our people. It has become notorious that we are daily having our lands stolen from us by designing white people.

The Indians living on the east side of the nation have long since disposed of their lands, and are now following the agents in our section of country with a band of white speculators, claiming other Indian names, and having undisposed of lands certified to. This course of conduct has been introduced about twenty days ago, and has succeeded in getting all unsold lands, except such of the Indians as the agents are personally acquainted with. A number of our people have died since being located; all such cases are stolen by living Indians, through the influence of white men. We believe, without your interference, justice will not be had. We pledge ourselves that every statement here made can be established by disinterested white people. During the last ten days we have no doubt of hundreds of Indian names having been stolen and certified to, when the right owners were at home and knew nothing of such contracts.

We now humbly beg for an investigation to be had, and for the white people making such purchases to be requested to produce the Indians before the agents, so that such Indian having a just right may have an opportunity of establishing his just claim. This course will bring round an opportunity of introducing correct proof. We find that such Indians as are stealing get but a small pittance in comparison to the fair value; for the lands are certified to any large prices, and the money immediately taken from them—telling the Indian that it is likely this contract will not be approved of.

We sincerely petition you to adopt some plan whereby justice may be had.

We will ever pray, &c. Your red brothers,

HOPOTH-LO-HOLO, his + mark.
 YOUNG KING, his + mark.
 TUSKENEAH-HAH, his + mark.
 LITTLE DOCTOR, his + mark.
 FOSACHE MICCO, his + mark.
 LATTA MICCO, his + mark.
 OLD KING, his + mark.
 MICCO OBOY, his + mark.

To the Honorable SECRETARY OF WAR.

E.

COOSAWDA, *March 23, 1835.*

OUR DEAR BROTHER: We, the undersigned, chiefs and headmen of the Creek tribe of Indians residing east of the Mississippi river, in general council assembled, deem it due to ourselves, to you, and to our people, to

make known to you the situation in which some of us, and many of our people, have been placed, by frauds which have been practised upon us in the certification of contracts for land.

We had fondly hoped, sir, that after we had sold our territory to the United States, reserving our humble homes, we should have been permitted to enjoy them unmolested; or at least, if we should be compelled to sell them, the small pittance arising from the sale should belong to us and to our children. But, sir, in this we have been mistaken. We were informed by our great father, at the time we entered into the treaty by which we sold our country, that when we should sell our reservations, he would appoint men to superintend the sale of them who were too high-minded and honorable, and too far removed from vulgar prejudice and sordid attachment, to countenance, in the smallest degree, any frauds that might be attempted to be practised upon us; and in order to consummate this promise, you, sir, were selected as one of those men. We, sir, were pleased with your appointment, and yet esteem you as a man who desires to do us justice; but we must assure you, in the language of respectful friendship, that the course recently pursued at your office is such as meets our disapprobation, and is calculated to oppress and ruin some of our people. We write this, therefore, to you, not to censure you, but to apprise you of facts, which we are bound, in justice to ourselves, to communicate. The causes of our complaints are the following:

We learn that almost all the land in your certifying district has been sold, and what is not sold is protested; that is, some person has purchased, and has not brought forward the reserves for certification. Now, sir, we assure you of the fact, that there has been at least one-third of the contracts for the sale of lands in the towns of Tuckabatchee, Thlobthlocco, or James Boy, Clewalla, Tallassee, and Otissee, that are fraudulent, and the land certified to the wrong Indian. There are also many other contracts of a similar character in other towns.

We wish not to be understood as charging you with having wilfully certified contracts to wrong Indians, although the voice of a part of the community cries out against you. We only wish to state these frauds do exist, and to excite you to vigilance and perseverance in detecting them. In what kind of predicament, sir, are we placed? An Indian, sir, who has sold his land at the instance of some fiendish, designing scoundrel, comes before you, and claims the name of another Indian, to whom the land rightfully belongs. The money is forthwith given up to the purchaser, save that portion which was to be given to the Indian as a premium for his rascality.

In this way, sir, a few hundred dollars and four or five Indians could sell all the land in the Creek purchase; and we know, in this way, hundreds of contracts have been made. The homes which have been rendered valuable by the labor of our hands, are torn from us by a combination of designing speculators, who haunt your office, and who, like the man among the tombs, are so fierce that no one can pass that way. The helpless widow and orphan, the aged and infirm father, are alike the victims of their cupidity. Sir, we have borne with this oppression until forbearance has ceased to be a virtue, and we are determined to speak out, let the consequences be as they may. While we have been at home preparing something for our dependent families to subsist on, other Indians have sold our homes, our all, the only means for our support; and when we

have applied to you for redress, what has most frequently been the result? Why, sir, that you would inquire into it. You place the burden of proof upon us; you exclude the testimony of our people, the only persons who can know much satisfactorily in relation to our claims. We are required to prove a negative--that we have not been the persons who sold. All of which, we assert, is oppressive; and although we have the charity to believe that you do not design these things to injure us, yet we must state, if persisted in, they will work our destruction. But worse than all this, and more to be regretted, is the fact, through fear of the merciless horde who surround your office, our people cannot speak to you in defence of their just rights without subjecting themselves to punishment.

Sir, we again repeat that we believe you are inclined to do us justice, and, under this belief, we rest satisfied that you will adopt some speedy and efficient means of detecting and exposing to the world the base frauds which have been practised upon yourself and us; and, in conclusion, we would humbly suggest that the deeds which have lately been certified by you (say within the last thirty or forty days) be retained, and that they undergo an investigation, and that hereafter the purchaser or his agent be required (as is done elsewhere) to take oath that he believes the Indian from whom he has purchased is the Indian located on the land sought to be purchased from him.

We have thought that the condition in which our people have been placed required that we talk thus plainly to you; and in order more effectually to secure the protection desired, we have sent a communication similar to this to the President of the United States, our great father.

We are, sir, your red brothers,

HOPOETHYOHOLLO, his X mark.
 LITTLE DOCTOR, his X mark.
 COSA FIXICO, his X mark.
 TUS-TUN-NUCKEE, his X mark.
 AH-CHO-LOCK HADJO, his X mark.
 COCHACK HADJO, his X mark.
 AHCHULLY HADJO, his X mark.
 TUSKENEAH HAH, his X mark.
 COSATUTUN-NUCKEE, his X mark.
 TUSCONO HADJO, his X mark.
 OPOY FIXICO, his X mark.
 MOMOTTO HADJO, his X mark.
 WILLIAM McGILBRY, his X mark.
 TUSKENEAH HAH, of Kialaga, his X mark.
 OHITCH FIXICO, his X mark.
 NAHLOCK FIXICO, his X mark.
 AHLOCK BADJO, his X mark.
 FOSUCH FIXICO, his X mark.

In presence of J. N. BRODNAX and BARENT DUBOIS.

N. B. One copy of the foregoing was sent to Dr. McHenry, to whom it was addressed, and another transmitted to the Commissioner of Indian Affairs, through L. Tarrant, Esq.

F.

TUCKABATCHEE, *March 24, 1835.*

SIR : On my arrival at Tallassee, and after I had left the council at Coosawda, the enclosed was put into my hands. I confess I was not pleased at the chiefs making me the medium of their communications in relation to the conduct of Dr. McHenry as certifying agent. I have always entertained the highest opinion of the integrity and honesty of Dr. McHenry; and that he has and will pursue a high-minded and honorable course is still my opinion. Yet, if the complaints of the Indians and common reports among the whites can be relied on, frauds have been practised upon him to a great extent—perhaps to a much greater extent than they have been upon me; but, with all the vigilance I have been enabled to use, they have to some extent been practised upon me; and if the same number of contracts had been certified by me, I am not sure that frauds to a great extent might not have been practised upon me. I believe that there is an organized plan of operations to deceive the agents, and to introduce the wrong Indian to certify or approve contracts. I require purchasers or their agents buying Indian reservations, to swear that they believe the Indian they introduce is the identical one located on the land they are about to purchase; but if any better plan can be adopted to prevent fraud in the sales of these lands than has already been made under the regulations adopted by the President for our government, I will most cheerfully submit to it. It is extremely difficult to get the parties again before the agent after a contract has been approved of, as the agents have no means to compel the attendance of witnesses when contracts have been impeached. Should the President suspend the approval of contracts, and institute some more efficient mode of detecting the frauds which have been committed, all the means in my power shall be afforded to detect frauds committed in my office by the purchasers of Indian reservations, or the Indians selling the same.

From all that I could learn at the council, I have no doubt but the chiefs are anxious to send a delegation to Washington, to enter into some arrangements with the Government in relation to their emigrating beyond the Mississippi, and for other purposes.

I am, sir, very respectfully, your most obedient servant,

LEONARD TARRANT.

ELBERT HERRING, Esq.,

Office of Indian Affairs, Washington, D. C.

G.COLUMBUS, (GEORGIA,) *March 25, 1835.*

SIR : Gen. J. W. A. Sanford gave me up his book on the 23d instant. There are but a few contracts remaining uncertified to on his books.

I wish you to retain the last packages of certified Creek contracts for a short time, for I have no doubt but the wrong Indian has been introduced and certified to in several instances. I have a number of certified contracts remaining in my own hands, which I shall investigate. I have

never seen corruption carried on to such perfection in all my life before. A number of the land purchasers think it rather an honor than a dishonor to defraud an Indian out of his land ; and if the agent cannot detect the fraud in passing the contract, he cannot prescribe an oath which they will not take. I do not wish you to understand that all purchasers are so corrupt ; for I believe in many instances the purchaser has bought, as he believes, from the right Indian ; for you find them roving all over the country, assuming different names, and selling lands which do not belong to them, and make it matter of speculation.

If the proper course is pursued this season by the emigrating agent, I think a thousand or fifteen hundred Indians will go to Arkansas.

My own opinion is, if the Government would pay off the annuity immediately, and insinuate to the head chiefs that it was the last that would be paid off here, they would emigrate in a mass.

Very respectfully, your obedient servant,

ROBERT W. McHENRY.

E. HERRING, Esq.,

Commissioner of Indian Affairs.

H.

STATE OF ALABAMA, CHAMBERS COUNTY,

April 8, 1835.

To the President of the United States :

SIR : We, the undersigned, citizens of the county of Chambers, in the State of Alabama, under existing circumstances, feel constrained, from a regard for ourselves, and for the principles of justice, to address you on the subject of the manner in which a portion of the Creek Indians east of the Mississippi river have been, and are now, deprived of their reservations. We are satisfied that the President would not permit those individuals to be thus deprived of the small pittance allowed them by the last treaty with our Government, by the artifice and intrigues of a combination of speculators, were he apprized that such was the fact. Our proximity to the office of one of the certifying agents, which is located in this county, enables us to speak from observation and indisputable authority of the manner in which the Indians have been stripped of *their* small estate, by imposition practised on the agent, by introducing before him the improper Indian. Thus situated, a due respect for ourselves and the character of our community, as well as a desire that justice should be done to the poorest and most humble individual, imperiously require that we should apprise you of the manner in which they have been treated, and request that you will exercise a prerogative most fortunately granted you in the treaty with those people, of withholding your approval of all contracts made and certified to, since the commencement of the fraudulent practices before alluded to, which, from the best information in the possession of the undersigned, was about the 18th of February last. It is not pretended that none of the contracts certified to by the agent for this district, since the aforesaid period, are fair and *bona fide* ; but it is asserted and believed, that the proportion which they bear to the great mass of those that are fraudulent and forged, is so small as to render the

distinction of the latter class much more desirable than the preservation of the former. Since that period they have no hesitation in saying, that, by fraudulent and false representations to the agent, and personifying the true and proper holder of the location, by introducing another and totally different Indian, a most perfect system of swindling has been carried on, by which hundreds of these people have, within a few weeks past, been deprived, without their knowledge, and of course without their consent, of their homes, secured to them by the solemn obligations of a treaty. In this way many of the most valuable reservations in the Creek country have been certified to, without any consideration whatever passing to the proper owner, and in fact none to any one, save the small bribe to the Indian who personates another; for the same sum paid before the agent, so soon as the parties pass from his immediate presence, is taken from the Indian introduced, and made a fund for further and similar operations. Thus it has become, since the period before alluded to, a regular business, not more distinguished for its baseness and corruption than for the boldness with which it is carried into execution. Justice requires your interposition, to prevent the injury which these ignorant and helpless people must otherwise sustain.

There is a view of this matter which, apart from the injustice which it works to the Indians, renders your interference important to your memorialists. It is highly desirable that these people should emigrate as early as possible; and it is very evident that their late treatment will have the effect of continuing them here much longer than they would otherwise remain. They have already in many instances (and it is no doubt a general feeling) declared their settled determination to remain until their father, the President, restores to them their homes. And they will do so until it is done, or their patience exhausted, their hopes vanquished, and their confidence in the justice of the Government totally destroyed. May not such a course of things drive some of these people into a state of desperation, fatal to the peace and safety of the community in which they may happen to live?

Again, the title to land thus procured can never be settled and secured. It must be the source of endless litigation, in which the innocent, in all probability, will most frequently suffer. It must produce, for years to come, in our community, a state of commotion and disquietude greatly to be deplored, and the consequences of which can be as easily imagined by yourself as detailed by your memorialists. The facts stated are susceptible of the clearest and most indisputable proof, should they be deemed of sufficient importance to attract your attention or justify an investigation. And your memorialists have taken the liberty, for reasons before stated, to suggest them, relying with the utmost confidence in the entire disposition of the President to do these people every justice in his power.

Charles McLemore,
Lewis McIntosh,
George W. Gafford,
Michael B. Spaden,
Carey Cox,
Charles Smith,
T. M. Sims,
Elijah Ray,

Silas Hobzelaw,
H. T. Dawson,
Baxter Taylor,
Michael Maddox,
Samuel Thompson,
John J. Dunn,
W. W. Carlisle,
John J. Williams,

Alexander Wadford,
E. Henry,
S. B. Robertson,
Jerry Driver,
William Z. Croughton,
A. Finlay,
S. W. Clements,
D. M. Anderson,

John McQueen,
Hardy Jones, jr.,
Lemuel Gresham,
Enoch Fagan,
James McDonald,
Obadiah Harris,
James Williams,
F. A. Smith,
Jeremiah Gafford,
Thomas E. Russell,

A. Deale,
Eaton Boss,
A. R. Beall,
M. Phillips,
John Farley,
Henry Williamson,
James T. Livingston,
James M. Lyon,
Nathaniel H. Greer,
Green Lee Holley,

Samuel R. Moss,
Amos T. Moss,
G. D. Ansley,
James G. Jones,
William Adkins,
Edmund Hanby,
Johnson Sawell,
William Giddins,
William H. House,
E. Beler.

I.

At a meeting of the citizens of Macon county and its vicinity, held at the house of James Abercrombie, on the 19th day of May, 1835, Colonel Joseph H. Howard was called to the chair, and Sampson Lanier appointed secretary. The object of the meeting being explained by the chairman, on motion, the following committee was appointed: Major John H. Brodnax, Captain James Abercrombie, Thomas M. Cowles, T. P. Redding, William Dick, Amos Green, John S. Green, Henry Rugely, Charles A. Abercrombie, Joseph P. Clough, Barent Dubois, and Stephen Day.

The following preamble and resolutions were entered into:

Whereas great fraud has recently been committed in obtaining titles to lands belonging to Indians, without their knowledge or consent in any way whatever. The person committing such frauds, or rather stealing the lands of the Indians, has some other Indian whom he has drilled with the description of the locations and other matters in relation to the land. The Indian, when thus drilled, and a new song put into his mouth, goes before the certifying agent, and passes his land by certificate, as being the real Indian owning that tract of land, to the stealer or white man, who immediately sends such certificate to Washington city for the approval of the President. The Indians, who are the rightful owners of the land, knowing nothing of this foul and dishonest transaction until nearly all their lands have been swept from under them.

And whereas we believe it yet in the power of the President to check this evil in a great degree, by withholding his approval from all bonds certified to since the 10th day of January, 1835; and require all lands that have been certified since that period to be recertified in each town, in the presence of their chiefs and headmen, who are ready and willing to assist in putting down this fraud: it is most devoutly to be wished that the President will exercise his power over this subject in such a way as will correct the past, and prevent the repetition of these wrongs for the future.

And whereas, more effectually to carry into view the expression of this meeting, they most earnestly request the President of the United States to give in charge to his agents superintending the certifications of contracts for lands which have been complained of as being fraudulent, that the purchaser be required to produce the Indian purchased from at the time of the investigation.

And be it therefore resolved, That this meeting agree to exercise all influence in their power to detect and put down all frauds, and to give the agents superintending, as aforesaid, every information which they may be in possession of, appertaining to the base transactions of personating the Indian justly entitled to the lands, and thereby defrauding him out of his rights.

And be it further resolved, That the proceedings of this meeting be signed by the chairman, and countersigned by the secretary; that the secretary be requested to forward a copy of the same to the President of the United States, and a copy to the editor of the Alabama Journal for publication, with a request that all editors friendly to good order will give it an insertion in their respective papers.

J. H. HOWARD, *Chairman*.

SAMPSON LANIER, *Secretary*.

K.

DEPARTMENT OF WAR, *April 28, 1835.*

SIR: Herewith you will receive copies of certain papers which have been transmitted to this Department, stating the existence of gross frauds in the pretended purchase of their reservations from the Creek Indians. These statements, if correct, certainly exhibit a state of things requiring immediate correction. The frauds appear to consist in the personation by one Indian of another, in the amount and payment of the purchase money, and in the corrupt practices of at least one justice of the peace, in the attestation of blank papers, which the parties have it in their power to fill up. Under the present circumstances you will suspend the certifying of all contracts until you receive directions to renew it from this Department, and you will give public notice of this instruction. None of the contracts now before the President will be approved until the necessary investigations are made to ascertain their fairness. They will be retained here, and abstracts of them, containing the necessary facts, will be transmitted to you as soon as they can be prepared. When these abstracts are received, you will publicly notify the parties of the suspension and investigations which have been ordered. Those contracts which you have certified and not forwarded, you will retain for subsequent disposition. If there are any of those which the President has approved yet in your possession, you will not deliver them to the parties without further instructions.

It is the object of the Department to provide against the recurrence of these evils, if it be possible; and I have to call upon you to make such suggestions as may occur to you, of a practical nature, best calculated to produce this effect. It is to be hoped that the conduct attributed to the justice of the peace, of certifying blank papers, cannot prevail much among the public officers in that part of the State. It is possible, however, that it may be more extensive than I suppose; and I have, therefore, to request your opinion, whether it would be expedient to restrict the authority of certifying such papers to a less numerous class of magistrates than justices of the peace—say to judges of the State courts. I am unwilling

to give such directions in the first instance, because I do not know the inconveniences to which it may lead.

With respect to the personification of one Indian by another, some remedy seems absolutely necessary. I am aware of the difficulty which you may experience in establishing the identity of an Indian presenting himself before you, as I perceive that false witnesses may be easily procured. It occurs to me that if you were to receive and certify contracts only at stated places, in the various Indian towns, and upon particular days to be fixed beforehand, when and where the Indians would assemble, and if all contracts were declared in the presence of those thus convened together, an entire check would be put to this fraudulent practice. It is hardly to be presumed that an Indian would present himself before a whole community perfectly acquainted with him, and claim to be a different person, and enter into a contract to convey away that person's land. And certainly, if such an attempt were made, it is not possible but that some of those around would state the true circumstances, and thus prevent the fraud.

You will please to communicate your views respecting this suggestion, stating particularly the places where you may think it proper to meet the Indians. I do not suppose it would be by any means necessary to visit every town, but only such place within each given district as may be convenient for the proper assemblage of the Indians. The time might be fixed at each place in succession, depending upon the probable amount of business to be done. This Department would, of course, expect, were this plan adopted, to allow, in addition to your present compensation, your necessary travelling expenses.

Is it possible to devise any better plan than that provided by the existing regulations for the payment and security to each Indian of the fair amount of the purchase-money he ought to receive? If it is, any practical suggestions you may make, and which may appear reasonable, will be immediately adopted. You have already had so much experience in this matter, that you cannot fail to have discovered the evils to which the Indians are exposed, and probably the best means of obviating them.

If the statements which have been made to this Department are correct, a large proportion of the contracts which have been formed since the beginning or middle of last February are fraudulent. Without determining this fact, and thereby prejudging the rights of individuals, there is certainly good reason for suspecting the whole, and therefore for instituting the proper investigations. How is this best to be done? Shall all the contracts be declared void on the ground of fraud, and the parties be required, in every case, to exhibit the proofs before you; or can a sufficient security against those fraudulent transactions which have taken place be interposed by an investigation which you can make into such cases as you have reason to believe, or as may be represented to you, to be fraudulent? In one case, the presumption of fraud, applying to all, every grantee would be required to exhibit his proofs *de novo*. In the other, the investigation, proceeding from the Government, would apply only to such cases as were presumed to require it. Your ideas upon this subject are requested.

In conducting these investigations, the same plan, it appears to me, would be most efficient in detecting fraud, which is suggested above for the prevention of it in future; and that is, to inquire into the matter in

every neighborhood where the contracting Indians reside, and to have the whole transaction developed in the presence of the various Indians who may be assembled. In this, and in the former case, it would greatly promote the object in view, by giving the necessary previous notice of the day of meeting, and the nature of the business, in order that the Indians might be present.

The object of this communication, as you will perceive, is to suspend all operations connected with the sale of the Creek lands until proper information can be received concerning the existence and extent of the frauds complained of, and the best method of preventing their recurrence. I have, therefore, to request your sentiments in full upon these topics. It is a subject on which the President feels great solicitude; and I cannot too forcibly impress its importance upon your attention.

The representations made lead to the belief that this fraudulent practice, of purchasing from one Indian the land of another, has prevailed only since the middle of last February. This, however, may be otherwise; and if any cases of that nature have previously occurred, and if the contracts have been approved by the President, still the fraud is not beyond the reach of the Government. Applications have frequently been made for a "title," as provided in the 3d article of the Creek treaty; but the President has not felt himself authorized to furnish any other evidence of conveyance than the one expressly pointed out in the treaty itself. It is possible that some legislative provision may be made requiring patents to be issued; and in that case it is clear, that if land belonging to one Indian has been conveyed by another, the transaction was absolutely void, and no title would be granted by the United States in consequence of such a contract. And, besides this, it may be proper for the Government to interpose, through the judicial tribunals, for the vacation of any contracts thus stamped by fraud, although they may have been approved by the President. There can be no doubt of the power of a court of justice to apply the necessary remedy.

It is, therefore, desirable to know whether such cases exist; and, if they do, to identify them, and to discover such proof as might be necessary to establish fraud. You will be pleased to direct your attention to this suggestion, and to communicate such information as you may be able to procure on the subject. Common humanity, as well as justice, requires of the Government that every measure in its power should be adopted to prevent the gross impositions which have been practised upon the ignorant Indians.

A similar letter has been sent to Dr. McHenry; and General Sanford and Mr. Bright have also been consulted on the subject.

Very respectfully, yours, &c.,

LEWIS CASS.

LEONARD TARRANT, Esq.,
Mardisville, Alabama.

L.

WAR DEPARTMENT, *March 11, 1836.*

GENTLEMEN: I transmit herewith a copy of the report made by Colonel Hogan on Dr. McHenry's report of the result of his investigation of contracts certified by him under the Creek treaty.

This report embraces five classes of cases: 1st, cases not prosecuted; 2d, cases given up; 3d, of special reports or affidavits; 4th, of transfers to General Sanford's district; 5th, of cases in which the ground of reversal is not stated. Of the 1st, there are 369; of the 2d, 205; of the 3d, 37; of the 4th, 2; of the 5th, 43. From the explanatory remarks appended to the tabular report, it is to be inferred that the first class embraces two kinds of cases—1st, those in which the purchaser did not appear; and, 2dly, those in which he appeared, but failed to bring the Indian of whom he purchased, or adduce sufficient evidence to support his claim. The number of each kind cannot be ascertained, nor is the evidence that was offered, or an abstract of it, communicated. It does not appear either, as it should, that in all cases proper notice was given, and the parties assigned or refused to assign any reason for not attending the investigation. It is obviously impossible for the President to act upon this part of the report.

In the second class of cases—those given up—by which it is understood the purchasers, in the presence of the agent, agreed to surrender their contracts, the Department will suspend its action for the present. They will, however, ultimately be reversed, unless something shall occur to call for a different course; and the recertified contracts will be approved, if no valid objection should be made to them.

The enclosed statement will show you the result of the examination of the affidavits and special reports; where the reversal is approved, other bonds may be certified; in the others, the first contract will not be touched. In the fourth class, the reason for the transfer should be stated. In the fifth class, the reversal cannot even be considered; there is nothing on which the Department can act.

The report is, therefore, returned for your joint revision. And I ask your special attention to the instructions of Colonel Hogan, of January 15th, a copy of which was sent to Mr. Burney and Mr. Anderson. Those instructions limit your investigations to cases in which probable cause is shown for suspecting fraud. They require, in such cases, proper notice of the investigation to be given to the purchasers; that the evidence taken shall be in the form of affidavits, where the witnesses understand the nature of an oath, and the reduction of all the testimony received to writing; that an abstract of these cases, (including, of course, a summary of the evidence on both sides,) shall be forwarded for the consideration of the President; and that no contracts shall be recertified prior to his action, but upon the admission of the parties in writing. With the report that has been transmitted, no abstract of the evidence is furnished.

You are requested to re-examine this whole matter together. As it is admitted by Dr. McHenry that the report he transmitted to Colonel Hogan was but a copy of the register he kept, (of which last the original cannot now be used,) it will be proper for you to compare the copy now sent to you with the register, which he has requested his brother to deliver to Major Abbott. If there are any discrepancies, you will ascertain, in the best manner you can, which is the correct entry. Having done this, you will fix upon the times at which you will attend in the public square in each town, for the purpose of investigating these cases, and give notice in the newspapers, by hand-bills, and in any other convenient mode, to the purchasers.

In this notice it should be distinctly stated that, if they do not appear, an *ex-parte* investigation will take place. No evidence will be received, which is offered as opinion or belief of the witnesses, founded on what they have heard or understood. The witnesses should speak from their own knowledge of the facts. Any other testimony is deemed insufficient to authorize the reversal of a contract. Ample opportunity should be given every Indian reservee to regain or secure his just rights; but inducements should not be held out to any to present complaints. The delay which will be occasioned by this new examination is to be regretted, and the Department urges upon you the importance of promptly completing it, and of proceeding with the general investigation with vigor, and with as much rapidity as may be consistent with correctness and a just regard to the rights of all parties.

It is proper for me to add, that it is not intended by returning this report to cast the slightest reflection upon Colonel Hogan. The confidence of the Department in him is undiminished. But in the exercise of the power vested in the President by the treaty, he must form his own judgment on facts presented to him, and not upon the opinions of others.

Very, &c.

LEWIS CASS.

To Col. J. B. HOGAN, *Columbus, Georgia.*

J. W. BURNEY, *Monticello, Georgia.*

Col. GEO. D. ANDERSON, *Decatur, De Kalb county, Georgia.*

M.

WAR DEPARTMENT, *May 19, 1836.*

GENTLEMEN: Intelligence just received from the Creek country in Alabama shows that the Creek Indians are now in a state of actual hostilities. Under these circumstances they must be considered as enemies; and it is, therefore, impossible at present to continue the investigations of the alleged frauds connected with the sale of their lands. The object at present is to reduce them to submission, and to remove them without further delay to the country west of the Mississippi. You will, therefore, close your business, transmitting to the office of Indian Affairs such of your papers as will be useful here, together with a report of your proceedings as far as you have gone. The military commanding officer will be directed to disarm the whole body of Indians, and to remove them by military force to the country west of the Mississippi. After this is effected and quiet restored, such measures will be taken as may seem to be required: on the subject of their land claims, your services will therefore no longer be required, and your accounts will be paid on presentation. You will likewise discharge all the persons employed under you.

To Col. J. B. HOGAN,

Col. G. D. ANDERSON,

J. W. BURNEY, *Tuskegee, Alabama.*

N.

WAR DEPARTMENT,

Office Indian Affairs, September 18, 1835.

SIR: On the 28th of April last you were instructed to suspend the certifying of contracts, until you should receive directions to renew it from the Department.

It has recently been represented to the department that there are some Creek Indians having reservations, and about which there is no dispute, who are disposed to sell them.

I am instructed to say, that in all such cases you are authorized to proceed in certifying contracts, being governed by the instructions heretofore communicated to you on this subject. The business was suspended for the benefit of the Indians, and the same motive now induces its renewal. The policy of the Government is, and always has been, in favor of the Indians selling on fair and equitable terms. The suspension was occasioned solely by an abuse of the terms prescribed by the department.

Very, &c.

ELBERT HERRING.

TO LEONARD TARRANT, Esq.,
Mardisville, Alabama.

O.

WAR DEPARTMENT,

Office Indian Affairs, September 26, 1835.

SIR: I have received your letter of the 12th instant, addressed to the Secretary of War, with the accompanying list of fraudulent contracts.

Until you are otherwise instructed by this department, you are requested to suspend all recertification of contracts for lands made prior to the 28th of April last, as also certification of sales since that day.

Respectfully, &c.

ELBERT HERRING.

TO DR. R. W. McHENRY,
Columbus, Georgia.

P.

WAR DEPARTMENT, *June 18, 1835.*

SIR: In addition to the instructions heretofore given you, the President directs that you certify no contracts not made in the presence of the reservee and yourself, and upon which the money is not actually paid in your presence.

You will examine with special care every case in which you have given certificates without these precautions, and require the reservee to be brought before you and identified by the chiefs.

Very, &c.

C. A. HARRIS,
Acting Secretary of War.

DR. R. W. McHENRY,
West Point, Troup county, Georgia.

Q.

WAR DEPARTMENT,
Office Indian Affairs, October 14, 1835.

SIR : I have received your letter of the 20th ultimo, in which you state you have had a recent interview with the Tuckabatchee chiefs, and they are anxious to emigrate this fall, and are in fact disposing of their personal property preparatory to that event.

Their speedy removal being pregnant with advantages both to them and to our own people, I am sure you will expedite it by all your exertions and influence.

It was not intended by the letter of the acting Secretary of War of the 18th June last, to authorize you to resume the duties of a certifying agent. But as you have construed that letter into such authority, you will of course submit those contracts to the examination of Colonel Hogan.

Very respectfully, &c.

ELBERT HERRING.

To Dr. R. W. McHENRY,
Columbus, Georgia.

R.

WAR DEPARTMENT,
Office Indian Affairs, October 28, 1835.

SIR : It has been represented to the department that there are many Creek Indians anxious to sell their reservations, and to which there is no conflicting claim.

You will, therefore, resume your duties as certifying agent, under the instructions heretofore given ; confining yourself to those cases which have never before been certified by you, and which, of course, exclude all recertification. And you cannot fail to perceive, from the complaints which have already been made on this subject, that the utmost vigilance will be necessary to prevent fraud, and to do justice to all concerned.

Very, &c.

ELBERT HERRING.

To LEONARD TARRANT, Esq.,
Mardisville, Alabama.

A similar letter was addressed to Dr. McHenry.

S.

WAR DEPARTMENT,
Office Indian Affairs, May 20, 1836.

SIR : The state of hostilities in the Creek country renders it necessary to discontinue the business of certifying contracts for reservations. I am

instructed to request that you will complete your reports without delay, and transmit the contracts you have certified, with such papers as may be necessary to a right understanding of the whole matter. You will transmit, at the same time, your accounts, made out in the usual form.

Very, &c.

LEONARD TARRANT, Esq., *Mardisville, Alabama.*

Major THOMAS J. ABBOTT, *Tuskegee, Alabama.*

JOHN STATON, Esq., *Mardisville, Alabama.*

Col. J. B. HOGAN, *Fort Mitchell and Tuskegee, Alabama.*

Adding, in the copy sent to the last, the following :

You will perceive, from the foregoing, which is a transcript of a letter to the certifying agents, that their services are dispensed with. As the letters may not reach them in the present unsettled state of things in the Creek country, you are requested, if in your power, to notify them of this fact.

I am also instructed to request you will give General Jesup any information he may require respecting the investigation in which you have been engaged. Very, &c.

T.

GREEN'S, NEAR TUSKEGEE, *September 17, 1836.*

*Office of the Commissioners appointed to examine the frauds
alleged to have been practised in the sale of Creek lands,
and into the causes of the late hostilities of the Creek
Indians.*

The undersigned commissioners, appointed for the purposes aforesaid, hereby give notice that they have adopted the following rules and regulations for the transaction of the business committed to their charge :

1. The secretary to the commissioners will forthwith open a docket of all the cases concerning the titles to land in the Creek country which are depending and undecided.

2. In every case in which a party claims a tract of land in the Creek country, and whose title has not been decided upon by the proper authority, such party will file a memorial by himself or counsel, addressed to the commissioners, setting forth the grounds of his claim, and filing therewith whatever written evidences he may have of the validity of his claim. Such party is required to file the same with the secretary within forty days from the foregoing date.

3. In all cases in which an Indian claims title to any tract of land in the Creek country, and the same is claimed adversely by a white man, the district attorneys of the United States will be assigned as the counsel of the Indian, to see that his case is properly presented for decision.

4. In all cases in which any individuals or associations of individuals or companies (other than Indians) claim title to Indian lands adversely, the contending parties shall file their memorials, setting forth their chain of title ; and if either party relies on parol evidence to establish his, her,

or their claim or claims, application must be made by themselves or counsel, in writing, to take the deposition of witnesses ; which applications the commissioners will grant, prescribing such terms as to them shall seem proper in the premises.

5. Each party to any case depending before the commissioners may file a written argument to establish the superiority of his claim to the land in question, and cite any legal authorities that he or his counsel may suppose apply to the principles advanced in such argument.

6. It is required that the memorials which may be filed shall set forth distinctly and fully the case of the party filing the same ; and each adverse party shall receive from the secretary a copy of the memorial of his opponent, whenever desired by a written application to the commissioners for the same.

7. In all cases of complication and difficulty, the commissioners will deliver written opinions, copies of which will be furnished to the parties interested therein, free of all charge.

8. Parties who are required by these regulations to file their memorials, are requested to do so as soon as they are able, consistently with the convenience of themselves or counsel, that the commissioners may proceed to dispose of the cases at an early day, and put the parties in the way of perfecting their titles by patents from the United States.

9. Further regulations, if circumstances shall render them necessary, will be made by the commissioners in regard to the matters committed to their charge, of which due public notice will be given in the several districts of the Creek country.

T. HARTLEY CRAWFORD,
ALFRED BALCH,
Commissioners.

U.

GREEN'S, NEAR TUSKEGEE, *October 17, 1836.*

Office of the Commissioners appointed to investigate alleged frauds in the sale of Indian reservations in the Creek nation.

NOTICE TO CLAIMANTS OF INDIAN RESERVATIONS.

There have been transmitted to the undersigned, from the War Department, a large number of contracts, which have been rejected by the proper authorities, because the same were not executed according to the rules and regulations prescribed to purchasers of Indian reservations, and to which no objection may be taken by Indians, or other persons claiming adversely : and there have also been transmitted to the undersigned a large number of contracts for reservations, which have been reversed by agents of the United States acting in the Creek country, and which stand impeached before us.

The first class of the said claimants are hereby notified that they must, if they wish their claims to be confirmed, file their memorials with the secretary to this board, within forty days from this time, setting forth the informalities found in their contracts, and furnishing such proofs by de-

positions of witnesses as will authorize their correction. All the necessary information to enable those persons to file their memorials will be afforded by the secretary to the commissioners.

The second class of the said claimants are hereby notified that, if they wish to set up the contracts which have been impeached and reversed, they must file their memorials, as prescribed in the rules and regulations adopted by this board on the 17th September last, and made public ; and they are further hereby notified, that they will be furnished by the secretary to this board with such information, derived from the contracts in its possession, as will enable such claimants to state all the facts and allegations necessary to be set forth in their memorials, before the same can be received, and permission given to take such proofs as the litigant parties may think it necessary or proper to adduce before any decisions are made by this board.

T. HARTLEY CRAWFORD,
ALFRED BALCH,
Commissioners.

W.

STATE OF ALABAMA, *Chambers county :*

Deposition of Arnold Seale, taken before Felix Stanley, an acting justice of the peace in and for said county, to be read in all cases to which it may apply, which are now pending before Thomas H. Crawford and Alfred Balch, esquires, now sitting as commissioners to investigate the frauds alleged to have been committed in the sale of Creek Indian reservations, &c.

This deponent, being duly sworn, deposes and says: That he resided at the office of Doctor McHenry, during the time that he was certifying Creek Indian reservations, and was acquainted with most of the traders who were purchasing Indian lands in the Creek country. Some time in the month of February, 1835, he learned, by report, that persons were stealing land at Columbus before General Sanford. A short time afterwards, McHenry was called on by the Columbus company to go down to the lower part of his district to certify contracts ; on his return, he informed me that he had certified a great many contracts during that trip below ; and he informed me that in a few days there would be a great many Indians brought up to be certified, by the people from Columbus and the lower part of the district. Accordingly, in a few days they began to pour in from different quarters, and I found there was a great confusion among them before they would commence certifying in relation to their Indians. I ascertained from Thomas S. Woodward and others their plan of operations. Woodward stated that they should not certify until they had made arrangements with him. He afterwards told me they had done it ; that he was not to certify any lands to the company, but that he was to be silent, and was to draw an equal share with them. There were to be ten shares in this company, as they afterwards informed me. They reported two men to each share ; I do not now recollect all of their names, but, so far as I do recollect, they were D. McDougald, General J.

C. Watson, N. M. and D. Thornton, Columbus Mills, Luther Blake, McDaniel, J. A. Hudson, Woodland, Walker, and the two Fitzpatricks were to draw the tenth share; there were also Paddy Carr, J. G. Worsham, E. S. Shorter, and I think Peabody and Hale; the balance I do not now recollect. They informed me they had other men operating for them on shares; that they furnished Wadsworth with money, and also Chamberlain and others. It appeared that Shorter, B. P. Tarver, the Scotts, and E. Corley formed another company, and Milton J. Tarver, Job Taylor, Johnson, and Hargroves, another; and George Stone, Brooks, Strange McBride, Mitchell, the Hadens, J. J. McCrory, the Cravens, John McQueen, and Samuel Williams—these all appeared to be active operators, and, I believe, certified a great many contracts during the land-stealing. A good many contracts were certified to A. J. Robinson & Co. Robinson, it appears, was interested in different companies. One part of A. J. Robinson's contracts, it appeared, that Williams, Gilder, and Vann were interested in; which contracts Vann has informed me that he held them, and would not give them up, nor suffer them to be put off by Robinson. Some time in the early part of March, 1835, the land-stealers were crowding into the office by droves, and certifying contracts very fast, and it appeared as though they would steal all the Indians' land; they seemed to carry on the business in the way of sport; and Wadsworth toasted a little crowd in my presence, "Here's to the man that can steal the most land to-morrow, without being caught at it." About this time I opposed them, and got into a difficulty, when Hargroves threatened to kill any man who would oppose them; that he believed that every man who was trading with the Indians was stealing lands; that he was, and that I was a fool if I did not go into it. I then informed the agent that they were stealing the land, and boasted of it in my presence when he was absent. McHenry then closed his book on them, and refused to certify for one day. There were various propositions made to me by different members of these companies; some to join them, and some not to oppose their contracts. Dozier Thornton proposed to give me the best section of land he had in the country, if I would pass by (that is, not oppose) the contracts when his name was read against a stolen contract. At this time, I begged him to quit the business, as it was too base for any honest man to be engaged in it. Nat. Macon Thornton tried me at different times to get me to join them, setting forth different reasons: one was, that our Government was sunk, and nothing but money would bear a man up after this time; another was, that it was better to give an Indian ten dollars than one thousand dollars, as money only proved a curse to Indians; another was, that he respected me, and wished me to make a fortune while it was in my power; that now was the time, and I must be simple if I did not go into it. I was tried by Thomas S. Woodward at different times; he stated that I was very much in their way; and that, if I was out of the way, they did not ask the balance of the company any odds; he wanted to know what I would take and quit the country, and not operate any more in the nation; I replied that I would take five thousand dollars; which he thought was a small sum; but I required of him that they should give up all the lands they had stolen, and bind themselves not to steal any more, which he would not agree to do. I then informed him that their company was not worth money enough to put me down. After this, McDougald came to me, to make arrangements with me, and we

agreed on the terms of a compromise, which were, that he and his company were to give up all their stolen contracts, and guaranty to me and my company the right of buying and recertifying the true Indians. William Dougherty and myself went to Columbus, and drew up articles of agreement to that effect, and presented them to the company; when D. Thornton objected to sign them, for the reason that it would be an open confession of having stolen the land, and that they had some regard for character; and the compromise was not effected. McDougald seemed to be anxious, and stated to me that he was willing to pay the right Indians for their land, but that the business had become dull, and they had adopted this plan to bring about a reaction, and cause the true owners to sell their lands. I informed these men that this land, stealing would cause innocent blood to be shed; that the Indians were declaring daily that they would kill any white man who would come and settle on their lands, as they had never sold their land; and I informed them that innocent farmers would be the sufferers, as they would buy the land, and would move on it. I feared that it would cause the innocent to be killed, as the Indians would kill the man that would take possession of their land; but they would not cease from the evil of their way. This deponent further states, that, during this certifying of lands, there were a large number of contracts which appeared, from the books, to be certified to Thornton and others, with the true owners of which this deponent was intimately acquainted; he states that he was in and about the office daily, and did not see these Indians on the ground. Witness further states, that he kept provisions for sale, and that those companies of land-stealers did buy a large quantity of provisions, and furnish the Indians with them, both at the office and in the camp. It seemed to be almost impossible to keep a supply, as the number was so great. At some times, there were, he thinks, from four to five hundred, and from that to one thousand Indians in their camps. Witness states that he was acquainted with some of the Indians belonging to the Upper U-fau-la town; Nioke was one, who was located to s. 7, 21, 22. This Indian's land was stolen. Pars-coaf-hauljo, who was located to w. 9, 20, 24; this case was given up by N. M. Thornton, and was recertified to J. J. Kidd in my presence. Jonathan A. Hudson and D. Thornton did give up the s. 12, 16, 24, which was located to an Indian named Talliah, of the Coosawda town: this contract was afterwards recertified to himself and J. A. Hudson. James Abercrombie, after hearing the statement of the witnesses, gave up the case of Simmecar, who was located to w. 1, 17, 23. He stated that he did not know the Indian, and that he had been imposed upon, and would not contend for the land; afterwards it was recertified to deponent. N. M. Thornton gave up some contracts, that were afterwards recertified to Washburn. Witness states that he has seen various contracts given up by various persons. Deponent states that he did attend the investigations in McHenry's strictly, and generally with a strong company; that the company pledged themselves that there should be a fair investigation. The company was strong, because there had been various threats made by the land-stealers to kill some of both whites and Indians who should try to break up the stolen contracts. Deponent knows that Doctor McHenry gave public notice of the time and place of holding the investigations; deponent saw advertisements to that effect at different times, and at various places, notifying all persons interested to attend to their claims; and he knows that

many of the land-stealers did attend, and some of them seemed to be willing to give up their stolen contracts. They stated they were driven to the act by the Columbus company; that they had made advances to the true holders of the land, and they had to adopt this plan to secure their advance-money. Deponent states, that among those were Job Taylor, George Stone, Philip Fitzpatrick, and Thomas S. Woodward. These all seemed willing to give up their stolen contracts, and were rebuying of the right Indians, and recertifying them. These men stated to me that they did oppose this plan of operation, but could not put it down. Deponent has seen Woodward point out contracts to Doctor McHenry, on his book, which he stated were stolen; that he knew the right Indians, and knew they had not been introduced before the agent; that he was interested in the contracts, though his name was not run; and that he felt authorized to give them up. Deponent further states, that he attended the investigations held by Colonel J. B. Hogan, in Sanford's district, with the exception of a few days; he knows that Colonel Hogan gave public notice of the time and place of holding his investigations, and called on those complained of, when they were present, to make their defence, if they had any; these persons were often present. Deponent states, that the first investigation he attended, in Sanford's district, was held at Fort Mitchell. The Indians seemed to be backward in coming up before the agent; witness states that he was in and about the camps, about three miles from the place, where there seemed to be several hundred Indians. The Indians stated they were furnished with beef by Paddy Carr, Mills, Blake, and, I think, Hudson. They further stated, they were told by these men not to go before Hogan to complain; that Hogan only wanted to enrol them, to send them off to Arkansas. Witness states that he found the land-stealers very strong. Witness did not expect that justice could be done, in consequence of their influence, and he returned to Chambers county to make up a company and get interpreters; which he did, and then returned to Sanford's district. Before deponent got back, Colonel Hogan had left for Irwinton. About this time, a difficulty occurred between the Indians and some of the Columbus people down on the river; and, as deponent thought, it was got up for the purpose of stopping the investigations. From the time that I returned with my company, I continued with Colonel Hogan through the investigations. Deponent states that he was informed by Colonel Hogan, when he arrived at Glenn's on the Hatchechubbe, that Doctor Mills stated he would go to Columbus and raise McDougald's company, and drive me and my company off; at which place Hogan investigated and reversed a good many contracts. From thence Colonel Hogan, deponent, and others went to the Cowiga near Gibson's, and Colonel Hogan there investigated and reversed some contracts; but a great many Indians, it seemed, were influenced by these land-stealers, and kept off. This I learned from the Indians themselves. From thence Colonel Hogan returned to Fort Mitchell, and sent by me the notices for holding an investigation in the Tonanulgar town. I went there, and remained until Hogan returned, and he then commenced the investigation again, when he found very strong opposition from McDougald's company.

It appeared that Mills, Blake, Hudson, and Paddy Carr had the Indian chiefs well drilled to force the common Indians to go up and state that they had sold their lands to some of the company. Deponent heard

some of the Indians, when interrogated by the agent, state that they had not sold their land, when the chiefs would speak, and tell them they must not say that, but that they must say they had sold to some of that company. It seems that Paddy Carr, and some others, were kept out constantly drilling the Indians. Deponent heard Dr. Mills, through his interpreter, drilling an Indian. When the Indian asked Mills what he must say when he went before the agent, Mills told him he must say he had sold his land to him. (Mills.) Deponent recollects one case that occurred during the investigation. The Indian denied having sold his land, when Hudson or some of the company claimed the land; Colonel Hogan told them to make some showing to establish their claim, and they made none; Colonel Hogan then reversed the case. After this Hudson took the Indian out, and drilled him until I suppose he thought the Indian would confess that he had sold his land. It appeared that Hudson gave the Indian a written paper, permitting him to live on the land, and then came back with the Indian before the agent. Hudson stated to the agent that he thought if he (Hogan) would interrogate the Indian again, that he would acknowledge that he had sold his land. Hogan then called on the Indian again, at which time the Indian presented the paper. Colonel Hogan asked him who gave him the paper; he answered Hudson, and pointed at him. Hogan then asked him again if he had sold his land to Hudson, when the Indian answered no. Hogan, as well as I recollect the question, asked him what that paper was for; the Indian then stated that he might live on the land, and Hudson would save his land for him. The Indian stated to the agent that Hudson had promised him that he would drive the white people off, and he should have his land again. Hogan at this seemed to get in a passion, and I think tore up the paper, and told the Indian that it was of no account, and that the land was his own. Hogan then addressed the white people, and stated that this contract stands reversed, and cautioned those land-stealers against such a course of conduct with the Indians. Hogan met the Indians the next day near Chapinan's store, when McDougald and his company opposed him very strongly; they had some difficulty and short words, but Hogan investigated and reversed some contracts. I then left, and went to the store of Chapman, where I was informed by Colonel Hogan and others that Daniel McDougald took out of his saddle-bags several hundred dollars in silver, and strewed it on the ground, and set the Indians to picking it up, as a breaking-up show of that investigation. Hogan then left for Tuskegee, and Major Abbott set out for the Opilike, Oswitche, and Chowockolo towns to investigate. Deponent having heard that the land-stealers had sent an Indian and a white man ahead to drill the Indians before the agent got there, a part of deponent's company pursued them, overtook them, and broke them up, and the investigation was conducted in good order, and a great many contracts were reversed, and deponent thinks justly. These transactions took place, as well as deponent remembers, in February, 1836.

Cross-examined :

Deponent states that he understands enough of the Indian language to converse with them; the statements which he has deposed to as having been made to him by the Indians, relative to their being told not to go before Hogan, were made in that language. He further states that at the investigations by Colonel Hogan in Sanford's district, he told the Indians

on all occasions, if their lands had been stolen, they ought to go before the agent and complain. He also states, that after Hoban commenced his investigation in Sanford's district, he formed a company, and went round for the purpose of seeing that justice was done, and for the purpose of buying up land that had not been sold, and such contracts as should be reversed by Hoban. The company made but few purchases in Sanford's district.

Re-examined by district attorney :

Deponent states that, among other Indians with whom he had the conversation referred to in his direct examination, were Oakfuskee Yoholo and Cussetaw Micco. These Indians were Cussetaw chiefs, but resided in the Secharlecha town. These chiefs stated that they had been sent for by Paddy Carr ; and, as well as deponent recollects, by Blake, Mills, and McDougald, to use their influence to prevent the Indians from going up to complain before Colonel Hogan. They stated that they had been instructed by these persons to tell the Indians that Hogan could not give them back their lands, but only wanted to enrol them to carry them off to Arkansas. These Indian chiefs had a good many relations residing in the Tonanulgar town, and were supposed to have great influence over that town. Deponent further states, that while in Sanford's district, and before the investigation was closed, Luther Blake came to the camp where this deponent was staying with others, and, in a conversation between the said Blake and John J. Williams, (who is now deceased,) Blake admitted and said that he had made arrangements with the Indians residing on the Uchee creek, (meaning, as this deponent understood, the Tonanulgar and Wartoolarharka towns,) to go before Hogan and acknowledge that they had sold their lands, and had promised them, if they would do it, they should eventually be paid for their land : Blake further stated that he intended to pay them. Deponent further states that, to the best of his knowledge and recollection, he has no interest in any reversed claim in Sanford's district, with the exception of those that were purchased by the company after reversal, and but few in cases of any other description in that district ; his whole interest being confined to four or five claims. Deponent further states that he uniformly told the Indians that, if they had ever been before the certifying agent and received any money for their lands, they should not complain. He uniformly impressed upon the chiefs with whom he conversed the necessity of cautioning their people against complaining if they had honestly sold. Deponent further states that an Indian woman, named Otekar, belonging to the Luchipoga town, and from whom he had purchased a reservation while a copartner in the firm of N. M. Thornton & Co., came to him during the time referred to, when the great certifying took place before McHenry, and insisted that he should have the contract certified. Having some time before disposed of his interest in the concern to D. and N. M. Thornton, he states that he went in company with said Indian to N. M. Thornton, and told him he must have the contract certified ; Thornton replied it had just been certified. Deponent states that he remarked to Thornton, that if it was certified it was stolen ; and that, unless he would immediately satisfy the woman, he would go in and have it ripped up. Thornton then agreed to pay the woman five dollars in cash, and give her her account, amounting to forty-five dollars, if she would be satisfied. The woman took the money, and made her mark to a deed ; but she was

not taken before the agent at that time, nor, as this deponent believes, at any other, time to be certified to her reservation. The contract was originally certified to B. P. Iverson & Co. Deponent further states that in the conversation had with McDougald in Columbus, and referred to in his direct examination, he understood McDougald's remark "that the plan of stealing had been adopted to bring about a reaction, and cause the true owners to sell their lands," as referring to both Sanford's and McHenry's districts. At the time the negotiation was going on, it was admitted by McDougald and the company that there were a great many stolen contracts, and this admission was understood to refer as much to Sanford's as to McHenry's district; that, out of about one hundred and seventy contracts certified to by one branch of this company, McDougald stated there were about forty honest contracts, and these were contracts which had been certified to by McCrory & Walker. These contracts were embraced within certain dates, which this deponent does not now recollect, but thinks it was from the 18th to the 28th February, 1835.

Cross-examined :

Deponent states that it was not expressly stated in what district the hundred and seventy contracts were, but he understood them to be in both districts.

ARNOLD SEALE.

STATE OF ALABAMA, *Chambers county* :

I, Felix Stanley, an acting justice of the peace in and for said county, do hereby certify that the foregoing depositions were answered, subscribed, and sworn to, before me, this 21st day of February, 1837.

FELIX STANLEY, *J. P.*

On the back of the foregoing deposition is the following :

Notice of time and place of taking the within deposition acknowledged, and form waived.

D. GOLIGHTLY.

X.

STATE OF ALABAMA, *Macon county* :

Interrogatories to be exhibited to Arnold Seale, to be read before Messrs. Crawford and Baleb, commissioners of alleged frauds in the Creek country, in Alabama.

Interrogatory 1. Were you ever engaged in the same company of land speculators with Daniel McDougald?

Interrogatory 2. In your previous depositions taken, you state that McDougald admitted that his (McDougald's) company had one hundred and seventy stolen cases, and but forty good ones; and that the admission extended to Sanford's district as well as to McHenry's. State whether or not this was not the observation made by McDougald: "that he (McDougald) knew that about forty of the alluded-to cases were genuine, for that he had attended to that number in person; but that it was likely that there might be some of the contracts imperfectly certified, and, if so, he regretted it, and should use his exertions to have them rectified;" and were not these remarks made in opposition to an opinion advanced by yourself; and in this conversation was any allusion had to Sanford's district?

Interrogatory 3. Do you recollect a letter written by McDougald to the

company in which he was interested, in Chambers county? If yea, what was the purport of that letter, and do you know where it is? If in your power, custody, or control, please attach the same, or a copy thereof, to your answers; and if not, state whether in that letter McDougald did not urge upon the company to deal fairly and liberally with the Indians, and in no case to take back the money.

Interrogatory 4. Did you ever see or know of McDougald's having certified an improper Indian, or defrauded one in any way? and state whether or not you did not consider him a fair and liberal man in all his dealings with the Indians.

Interrogatory 5. In your previous deposition on the subject, taken by Bryant, you state that Colonel Hogan returned to Fort Mitchell, and sent by you the notices for holding an investigation in the Tonanulgar town; that deponent went there, and remained until Hogan returned; he then commenced the investigation again, when he met with strong opposition from McDougald and his company: state where Tonanulgar town, alluded to, is situated, and what sort of opposition was made by McDougald and company.

Interrogatory 6. In your previous examination, before alluded to, you state that Hogan met the Indians the next day at Chapman's store, where McDougald and his company opposed him very strongly; that they had some difficulty, and short words: state the means of opposition used by McDougald, and the short words used. Was not the difficulty alluded to in relation to a tract of land purchased by Lucas, who was killed by an Indian a considerable time previously, and alleged by McDougald to have been purchased at administrator's sale by him, (McDougald,) at the price of four thousand dollars, with the approved contract in his possession? Did not the Indian located on said land deny having sold it, but admit that he had received various sums of money from Lucas; but did not the chiefs and other Indians assert that he had sold to Lucas?

Interrogatory 7. Did not Hogan say to McDougald that, if he would pay the Indian two hundred and eighty dollars, he would not reverse the case? Did not McDougald refuse to do so, because he said that the Indian had received his pay; but that he was willing to give the money to the town? and state whether or not he did so?

Interrogatory 8. In your previous depositions, you state that McDougald came to you to make arrangements with you, and that you agreed on the terms of a compromise; which was, that he and his company were to give up all their stolen contracts, and guaranty to you and your company the right of recertifying the true holders. Did you not come or send to McDougald, and did you not say that you would enter into an agreement with McDougald? If yea, what reason did you give for being willing to negotiate with him in preference to others?

Interrogatory 9. Who composed your company, and what interest did you demand?

Interrogatory 10. Did you not agree to take less than you at first demanded?

Interrogatory 11. Was not another meeting to take place, if the company would agree to your terms, in a few days, with an agreement drawn up?

Interrogatory 12. Did or did not you go to Chambers, and actually commence operations for the company which you supposed you had formed with McDougald and others?

Interrogatory 13. When the arrangement was not carried out according to your expectation, did you not say that you were fooled, and were you not very much dissatisfied?

Interrogatory 14. Did you ever certify any Indian contracts for land? if yea, did you ever, by yourself or agent, take back, or were you in any way or manner interested in taking back, the purchase-money, or any part thereof?

Interrogatory 15. Did you or not in all cases take the oath, a copy of which is hereunto annexed?

Interrogatory 16. You stated, in your previous depositions, that Hogan reversed a good many cases in your presence: and, in another part, you say that Mills and others were very active in preventing the Indians from coming before the agent. Please give the names of those that were reversed in the different towns, and those Indians that were prevented, or induced not to go before the agent.

Interrogatory 17. What amount have you and your company invested in land claims in the Creek country that is unsettled, and in opposition to the company in which McDougald is interested?

Interrogatory 18. Do you consider yourself, in these matters, a disinterested witness? Are you not largely interested, both pecuniarily and in feeling; and can you say that you do not expect to be gainer or loser by the event of this investigation?

J. H. CAMPBELL, *claimants' attorney.*

STATE OF ALABAMA, *Macon county:*

Before me, Williamson M. Freeman, a justice of the peace in and for the county and State aforesaid, and at the house of the said Williamson M. Freeman, personally came Arnold Seale, who, after being duly sworn, deposeth, and answers the foregoing interrogatories as follows:

To the first, he answers that, at one time, he was engaged in a company with Nat. Macon Thornton and D. Thornton, and that he understood from D. Thornton that he had made an arrangement to have McDougald join them in the company, and asked deponent how he liked it. Deponent answered, if he (deponent) conceived it to be his (deponent's) interest, he would submit to the arrangement he had made. Deponent then asked Thornton what kind of an arrangement he had made. Thornton said he had not time to relate the contract which he had made then, but would at some other time, which he failed to do. Deponent then became dissatisfied, and quit the company.

To the second, he answers that, in a conversation he had with McDougald, he stated that one branch of his operators had certified one hundred and seventy contracts, and that he knew forty of them to be honest contracts, for that they were contracts for which he had old bonds, and had been made by McCrory, himself, and Walker; and that they had made some advances on them. He did not state whether they were in Sanford's or McHenry's district, but that he took it for granted that the forty contracts alluded to were in McHenry's district, from the fact that he stated that McCrory had purchased them. He did not say that the forty contracts were or were not the only honest contracts in the one hundred and

seventy. He says it was not; on the contrary, that he (McDougald) stated that they had adopted the plan of personating Indians, in order to have the right Indians to sell their lands; that he himself was willing and anxious to have the true owners brought up and certified, and that he was willing to pay the true owners the money; that he was willing that deponent and his company should do so, but that some of his (McDougald's) company opposed it, and broke it up. And he further states to a question asked by Nat. Macon Thornton, being present, that he has no recollection that the name of Nat. Macon Thornton was mentioned in that conversation. He has no recollection that those remarks of McDougald were made in opposition to an opinion advanced by deponent. He states that he did not designate either district.

To the third interrogatory, he answers that he has no recollection of ever having seen the letter alluded to.

To the fourth interrogatory, he answers that he never knew McDougald himself to bring up an Indian before the agent, to the best of his present recollection, but that he did not act in person in bringing up Indians; that McDougald told him that he had certified dead Indians' claims, and that he (deponent) considered that fraudulent. He says that he did not consider that he was fair and liberal.

To the fifth, he answers that on the first day he does not think that McDougald was there, but some of his company were there; that Tonaluga town was near Chapman's store, but that where they met on the first day was called Tonamulla also on the census agent roll, but that the Indians called it Wartoolaharka. He states that he saw Mills busy with the Indians, and heard him tell an Indian (to a question asked by the Indian to know what he should say to the agent) that he must tell the agent that he had sold his land to him, Mills. He saw Hudson take an Indian off and talk to him, but did not hear the conversation; he then brought him back before the agent.

To the sixth, he answers that he understood Paddy Carr to be one of the company; that he saw him busily engaged in talking with the Indians. He also saw Blake engaged with them in the same manner; heard none of the language, except what he heard from Paddy Carr and other Indians, which he understands is not legal testimony. Saw McDougald and Hogan get very mad with each other, and have some short words, but does not recollect the words. He recollects hearing the Lucas case mentioned, but does not know that that was the case they got mad about: he thinks that the Indian acknowledged that he had sold to Lucas, and had received money, but thinks that he denied having been certified; recollects hearing McDougald say that he had bought the tract of land at Lucas's sale, but does not recollect the price, if it was stated at all.

To the seventh, he answers that he does not recollect the amount, but that he thinks that upon a calculation some money was coming to the Indian, and thinks that Hogan did say, if McDougald would pay it, that he would not reverse the contract; thinks that McDougald stated that the Indian had been paid; does not of his own knowledge know any thing about McDougald's giving the money to the town.

To the eighth, he answers that the history of this transaction he has given in his previous depositions; that the reason why he pitched upon McDougald was, that he had more confidence in him than any other man in the company, and believed that if McDougald pledged himself that he

To the ninth, he answers that his company was composed of himself, William Dougherty, Sroud, and Charles McLemore; these were all the heads of the company, but we had other operators; that he first demanded that one company should be equal to the other.

To the twelfth, he answers that he did not.

To the fourteenth, he answers that he has, in person, both for himself and his company, brought up and certified a great many contracts, and that he has taken back thousands of dollars, and that it was done in pursuance of a general rule of the company to which he belonged, and which McDougald joined, and that the money was always honestly paid back to the Indians, so far as he knows or believes, or they were paid in property.

To the sixteenth, he answers, he does not recollect what cases were reversed, but presumes they may be found by reference to the books of Hogan; nor does he recollect the names of the Indians prevented from going before the agent, as he has no record of their names.

To the eighteenth, he answers that he does expect to be loser, and always has, ever since they commenced stealing land.

ARNOLD SEALE.

WILLIAMSON M. FREEMAN, *J. P.*

Of the taking of the foregoing deposition, the following notice is on file :

To WILLIAM H. STILES, *District Attorney:*

D. GOLIGHTLY.

Y.

STATE OF ALABAMA, *Macon county* :

The examination of John Garrett, taken, by consent, at the house of John S. Green, in the county of Macon, January 16, 1837.

Witness resides in Cussetaw, Chambers county, Alabama ; has resided there since about the 1st of January, 1835. Dr. McHenry kept his office near this place, at a place called Seale's store. Was frequently at the office of Dr. McHenry when he was certifying. Witness's store was a little over a half mile from the agent's office, and he was passing to and from the office daily, from the middle of February till the 1st March, 1835. There was a good deal of certifying done at the office between those dates ; that the persons who had the most land certified, resided in and about Columbus. About the last of January, 1835, he first heard of the personation of Indians. Julius Brooks was the first person who gave him information of what was going on, and the manner in which Indians were drilled. From about the 1st of February to the 1st of March, there were encampments of Indians about Cussetaw. The Indians were kept in different bunches—some on one side of a branch, and some on the other. Elijah Corley, who lived in Fish-pond, seemed to have control of one parcel, together with J. J. McCrory : they seemed to act together. Benjamin P. Tarver and Milton J. Tarver seemed to be interested with these. Witness supposes that there were from four to five hundred Indians encamped about the agency : the woods appeared to be full of them. Corley informed witness that he was acting for McDougald, and Shorter, and Tarver. Witness furnished a great many of the Indians with meal and bacon, (which he kept for sale,) and was paid therefor by Corley and McCrory—they having requested him to furnish. B. P. Tarver also procured some provisions for the Indians. The week that the certifying closed, witness had a conversation with E. Corley, who informed him that he had done a fine week's work—having had one hundred and seventy-two or one hundred and eighty-two pieces of land certified. Corley informed him that the way he did, was, to go to the agent's book and take off such locations as he wanted, and that were not certified, the town in which the land lay, and the name of the Indian who owned the location ; that he would then go to his camp, and take an Indian that he thought would answer his purpose, and drill him, by learning him the name that he was to answer to, the name of the chief of the town where the land lay, and the situation of the town-house, and such other questions as the agent would be likely to ask. As well as witness recollects, McCrory informed him that he was acting for the Columbus company. Witness stood by, and saw a great many contracts certified, and was afterwards present at the investigations, and saw the Indians who were recognised by the chiefs as the true holders of the locations, and is satisfied that they were not the Indians that he had seen certified. Witness saw A. J. Robinson at the time that the certifying was going on ; he seemed to be concerned with William Vann, John J. Williams, and Gilder & Co. This company filled up their bonds in the store-house occupied by witness. Robinson asked witness, on one occasion, why he did not take a hand with them ; and when witness answered, he said that he would pick him out a good piece on the morrow, and have it certified to him, (witness,) as it would not cost more than five or ten dollars. Witness has heard Vann and Williams say

that they did not claim the land that was certified to them in this way ; that they only did it to prevent others from stealing it ; and most, if not all, the contracts certified to that company were given up at the investigation. Witness knows that frauds were practised by McQueen & Co., S. Williams, and Thompson.

There was a man named William C. Hill who was engaged in the business, but does not know who was concerned with him. Witness states that he saw Dozier and Nat. Macon Thornton, Columbus Mills, and Jonathan A. Hudson, about the agency at different times while the alleged personation was going on ; and McHenry's books will show many contracts certified, in which the names of these individuals appear ; and, from his recollection of the appearance of the Indians that were about the agency at that time, and the Indians that he afterwards saw recognised by the chiefs as the true holders of the locations, he is satisfied that they had but few, if any, honest contracts certified during the time alluded to—say from middle of January to middle of March. Witness heard Mills say that if any person interfered with his matters, he would cut his throat from ear to ear. Witness understood him to allude to the contracts which he had had certified. He also heard Colonel Wadsworth make threats if any person should interfere with his contracts. Witness knows that, owing to threats which had been made by those who were engaged in certifying, Dr. McHenry closed his office, and refused to certify for the greater part of the day. McCrory stated that the business below in Sanford's district was swept out, so that it was not worth attending to ; that they had gone through McHenry's, all that was worth having ; and that if McHenry would turn over his books to Judge Tarrant, they would get the few pieces that were good that lay about there.

Witness attended the investigations held by Dr. McHenry in most of the towns in his district ; saw Dr. McHenry's notices of the time and places where he would hold his investigations, and a parcel of them were delivered to him by E. Corley, to be stuck up. Every opportunity was afforded the persons who had had contracts certified, to establish them if they had been honestly obtained ; and McHenry gave notice that if the purchasers, or their agent or agents, would swear to the identity of the Indian certified, he would confirm the contract.

Witness states that he attended an investigation in Highlogtown, held by Colonel Hogan, and at two other places. A memorandum kept during the investigation enables him to state that there were something like a hundred and seventy contracts reversed by Colonel Hogan in the towns in which he attended, and the cases in that memorandum he thinks were all reversed. Witness saw Mills, Blake, and Hudson at the investigations ; is not certain whether they were at all the investigations. The investigations were held in public, and after public notice, and ample opportunity was afforded to the purchasers to substantiate their contracts. Witness is of the opinion that the different individuals interested made great exertions to keep the Indians from complaining. Witness states, that after a case was investigated in which J. A. Hudson was interested, and reversed by Colonel Hogan, Hudson took the Indian off, and, after some conversation with him through an interpreter, which witness did not hear, said Hudson gave the Indian a paper, and then came up to Colonel Hogan and said he thought that the Indian would then acknowledge that he had sold him his land. Colonel Hogan then asked the Indian ; he said

he had not sold, but that Hudson had told him that if he would acknowledge that he had, he would save him his land, and that he might still live on it, and that after a while they would drive the white people out, and then he could have his land again. Hudson was present when the Indian made this statement, and did not contradict it.

Cross-examined:

Witness recollects positively that Corley said he was having land certified for McDougald, Shorter, and Tarver. Witness is partly certain that the admissions of Corley and McCrory before related, were made about the first of March. Witness is positive that McCrory told him that he was acting for McDougald, Shorter, and Tarver. Witness has before stated that he saw the Indians who were present at the time contracts were certified, and afterwards saw different Indians identified by the chiefs at the investigations as the holders of the same locations; but witness states that he cannot now recollect of any particular case of the kind. He does not remember the names of the Indians; he was a stranger in the country, and had resided in Alabama but a short time. One case he does recollect; it was a woman by the name of Ote-kar, of Luchipogatown, who was certified to B. V. Iverson & Co. Witness never heard Dr. Mills make any threats but at one time. Witness never heard any complaints against Robert S. Hardaway as agent for the Columbus Land Company that he now recollects.

The above is just and true to the best of my recollection.

JOHN GARRETT.

The foregoing depositions on this sheet of paper, were subscribed and sworn to before me, this 11th day of February, 1837.

FELIX STANLEY, *J. P.*

Z.

THE STATE OF ALABAMA, *Chambers county*:

Deposition of John Taylor, taken before me, Felix Stanley, an acting justice of the peace in and for said county, to be read in evidence in all cases to which the same may apply, and which are now pending before Thomas H. Crawford and Alfred Baleh, Esqrs., now sitting as commissioners at Green's, near Tuskegee, to investigate the frauds alleged to have been committed in the sale of Creek Indian reservations.

This deponent, being duly sworn, deposes and says: That, in the first of the year 1835, he resided about a mile and a half from Doctor McHenry's office. Some time in February of that year, Judge Shorter came to deponent's house, and staid there for a day or two; he had a book in his possession, which he said was the agent's book, and that he was taking a list of all the uncertified cases in McHenry's district. This was a day or two before the crowd collected at the agency. McDougald, Mills, Watson, Hudson, McDaniel, Wadsworth, Featherston, Woodland, N. M. and D. Thornton came to my house a day or two after Judge Shorter arrived; Blake was also there occasionally. The rest put up at my house, where the most of them staid until McHenry started to the lower part of his dis-

trict, when they also went away. When McHenry returned, some or all of the persons above named came back and staid at deponent's house again. While at deponent's house, he frequently heard them talking on their plans, and the course which they had been and still were pursuing. Deponent heard Judge Shorter say that the first lands he had ever had certified in the nation, he had pursued Colonel Abert to Line creek and back to Lewis's stand, and finally had them certified at Fort Mitchell. The land, he said, belonged to Uchee Indians; and he said it made no difference with him whether he had the right Indian or not, so he had a Uchee Indian; and he farther stated, that the best of it was, that after he had had them certified, he took them down to the branch and took back all the money from them. Deponent was satisfied, from what Judge Shorter said, that in these cases he had the wrong Indians, and not the true holders of the land, certified. Heard McDougald state that money was a curse to an Indian, and that they had better have five dollars for their land than a thousand. Judge Shorter told deponent that if he would go up to McHenry's he would show him how they had closed the business in Sanford's district, and they were determined to close McHenry's in the same way. Witness understood Judge Shorter to allude to the personation of one Indian for another. Witness did not believe that the plan was possible, for a day or two, when he went up to McHenry's office, where, from the course pursued, and what he saw, he became perfectly satisfied that these men were basely engaged in personating Indians, or, in other words, in stealing land. Propositions were made to deponent by A. J. Robinson and others, to join them. Robinson stated to deponent that they were engaged in stealing land, by personating Indians, and on one day borrowed five or six hundred dollars, in one hundred dollar bills, from deponent; and in the evening he stated to deponent that he had certified a number of contracts in the course of the day with the money, and then paid him back the same bills which he had loaned him in the morning. Deponent further states that he was present on one evening when a settlement of the day's operations took place between them; McDougald, Watson, D. and N. M. Thornton, Mills, Blake, Hudson, J. G. Warsham, McDaniel, Woodland, and some others were present. D. Thornton had the money, and it was stated that a certain number of contracts had been passed that day with the money which had been then laid on the table for a settlement. It was stated that interpreters' fees had that day been higher than they had been before; and the impression was made on his mind, that interpreters' fees, and about five dollars to the Indian, was all that was expended by them for each contract certified. This settlement took place at the house of this deponent. During this time deponent was at McHenry's office almost every day, and there were large crowds of Indians encamped around and about the agency—say from three to five hundred. Deponent states that he was at McKeen's a short time before Colonel Hogan closed his investigation at that place. McKeen lived on the old Federal road, and in Sanford's district. The next day deponent went to Glenn's, on the Hatcheehubba creek, where Colonel Hogan held an investigation. Deponent states that a good many Indians went forward and complained, and a great many contracts were reversed. Mills and Hudson, and perhaps some others of the Columbus speculators, were present, and had their interpreters. Mills and Hudson were very active in taking out Indians and conversing with them; but what was

the subject of conversation deponent does not know. Colonel Hogan then went to Cowiga, and this deponent was present there also. An investigation was held, and some contracts were complained of as fraudulent; and a good many complaints that the money with which they had been certified had been taken away from them. Deponent does not understand the Indian language, but in these towns the Indians frequently told him, through interpreters in whom he had every confidence, that Gibson, Scott, and Dave Hardridge told them not to go up and complain, for Hogan had no power to give them back their lands, and that he only wanted to enrol them and take them off to Arkansas. The next investigation that deponent attended was at the Wartoolaharka square, where Colonel Hogan investigated a part of the Tonanulgar town. At this investigation an Indian came up and complained that he had not sold his land. The land was certified, as well as deponent recollects, to Hudson. After investigating the matter, Colonel Hogan said he would reverse the contract. Hudson then took the Indian off, and, after having him out some time, he came back with the Indian, and told Colonel Hogan that if he would interrogate the Indian again, he thought that he would acknowledge that he had sold. Colonel Hogan then asked the Indian if he had sold his land to Hudson, and he said—no; and presented a paper. Colonel Hogan asked him who gave him the paper, and he said Hudson. He farther stated that Hudson had told him that he might live on the land, and that he (Hudson) would save the land for him, and in a short time that he would drive the white people off, and he should have his land again. This was what the interpreter stated to Colonel Hogan that the Indian said: it was interpreted in the presence of Hudson, and he did not contradict or deny having so stated to the Indian. Colonel Hogan then seemed to get angry, and I think tore up the paper, and said that the contract should stand reversed. Colonel Hogan told the Indian that he need not take a paper from anybody, as the land was his own; that if he had never sold his land, the land still belonged to him. Colonel Hogan further stated that evil consequences must grow out of such statements to the Indians, and then advised the Indians that they had better make their arrangements and get off to Arkansas. Colonel Hogan then went to the neighborhood of Chapman's store, and held an investigation for the balance of the Tonanulgar town. Deponent was present there also. McDougald, Hudson, Blake, and Mills, were also present. While there, Doctor Mills drew a pistol on Absalom Islands, who was a half-breed chief and an interpreter, and swore that if he spoke to one of his Indians again he would kill him. He also commenced abusing a young man named Coker, and said he was interfering with his Indians. Coker stated that he had only told the Indians if they had not sold they ought not to acknowledge that they had. Mills said it was no business of his; that he had made his own arrangements with the Indians, and that he would whip or kill any man who interfered with them. Witness states further, that he heard a conversation between Luther Blake and John J. Williams, who is now deceased, at a camp where this deponent and others were staying. Blake admitted and said that he had made arrangements with the Indians belonging to the Tonanulgar town, to go before the agent and acknowledge that they had sold their land, and that he had promised them, if they would do it, they should be paid for their land; and Blake then said that he intended to do it. Deponent further states, that while at the Tonanulgar town, it was

understood that the Columbus Company had sent a white man and an Indian into the Chowocolo and Oswitchee, or Opilike towns, to drill the Indians against Hogan got there to investigate. Believing the report, the company to which he belonged divided, and one party pursued the persons who had been thus sent, to try to overtake them and prevent any improper influence from being exerted over the Indians. When Colonel Hogan got to these towns, a large proportion of the Indians came forward and complained; and after investigation the contracts were reversed. Deponent further states, that in all the conversations held in his presence, by persons attending the investigations, except those who appeared to be interested, it was impressed upon both chiefs and Indians, that if any of them had sold their lands, they should not say that they had not, but they should acknowledge it. Deponent further says that he is interested, to a small extent, in four contracts only, in Sanford's district—two of them stood open on the books at the time of the investigation, and were certified by Colonel Hogan; and that he is interested in no others in Sanford's district. Deponent further states, that while at Tonanulgar, Indians frequently told him, through interpreters in whom he had every confidence, that McDougald, Mills, Blake, and Hudson, had told them that they must not complain, but acknowledge that they had sold their land to some of the company; that Hogan had no power to give them back their land, and that he only wanted to enrol them to have them carried off to Arkansas.

JOHN TAYLOR.

STATE OF ALABAMA, *Chambers county*:

I, Felix Stanley, an acting justice of the peace in and for said county, do hereby certify that the foregoing deposition was taken, subscribed, and sworn to before me, this 21st February, 1837.

FELIX STANLEY, *J. P.*

On the back of the foregoing deposition is the following entry: Service of notice of time and place of taking the within deposition acknowledged, and form waived.

D. COLIGHTLY.

AA.

Deposition of Edwin E. Bissell, taken before Michael N. Clarke, a justice of the peace in and for the county of Muscogee, and State of Georgia, to be read in cases to which it applies, and which are now pending before Thomas H. Crawford and Alfred Balch, Esquires, commissioners, &c.

The said Edwin E. Bissell, being duly sworn, says: That some time in January or February, 1835, he went out to the Polecat springs, and established a store, with the intention of purchasing Indian lands; states, that some time in February he went to Doctor McHenry's office, for the purpose of having some contracts certified. He took some three or four

Indians, from whom he had purchased, with him. When he reached the office, he found the contracts marked in McHenry's book as already certified. Most of the persons he had known as land buyers were there; both from Columbus and from Alabama. Saw several camps of Indians about there. Deponent states that, being disappointed in his expectation of having his contracts certified, he determined to leave the place; he was, however, called upon by James H. Shorter, who this deponent had understood and believed to be one of the firm of Shorter, Tarver, and Shorter, or Shorter, Tarver, and Co., to witness some contracts for him. Witness went with him to a camp of Indians, which was about a quarter of a mile from the agent's office, where he found a parcel collected, and did witness, as well as he recollects, between ten and fifteen contracts. Witness states that he did not know one of the Indians, nor the towns to which they belonged. Shorter had a deed for each contract that deponent witnessed, with the name of the Indian written on the back, and the location; but he cannot say whether the deeds signed were blank forms, or whether they had been filled up before they were signed, nor does he know whether they were dated as on the day that he witnessed them; but he knows that it was done in the time of the snow.

Cross-examined :

He states that one of the said Indians whom he took with him to McHenry's to be certified, acknowledged, after he got there, that he had sold his land to another person before. He also states that he was several times at the camp where Shorter, Tarver, and Co.'s Indians were stationed, and he saw no attempt to teach any Indian to assume another's name.

EDWIN E. BISSELL.

Sworn and subscribed before me, this 3d day of February, 1837.

MICHAEL N. CLARKE, *J. P.*

On the back of this deposition is the following writing :

I acknowledge service of notice of the time and place of taking the within deposition, and consent that the same may be read in any case to which it may apply, and waive form.

D. GOLIGHTLY.

BB.

COLUMBUS, *January 28, 1835.*

GENTLEMEN : It becomes my duty to apprise you of a new movement in regard to our Indian relations, which deeply affects our interests and operations. General Sanford has stated that, on the 1st of March, himself and McHenry will cease certifying, and I presume Judge Tarrant will do the same. This is the *Government order*. Why it is so, or what is the object, none of us know. But one thing is certain, that every Indian in the eastern, and, I have no doubt, also in the western part of the nation, who does not sell in the next month, will lose the chance of selling altogether, and, by some manœuvre, their land will become Government property. It will be remembered that, at the last Indian council at Fish-pond, the Government caused a proposition to be made to Ho-poeth-lo Yoholo

to purchase the unsold reservations: that he replied it was more than he dared at that time to do; but that if the Government would wait till his return from the West in the spring, he would answer the application. It will be remembered, also, that a delegation of the Cherokees attended the above meeting, and urged upon the chiefs of the Creek nation the propriety of raising a large joint national fund for their mutual use in the West. Let it also not be forgotten that Ho-poeth-lo Yoholo is now at the West, and expected back the first of March, and that a delegation of Cherokees is now at Washington. When all these particulars are put together, you will see that the private Indians who are so foolish as to refuse selling, are in a fair way to have their lands applied to the raising of a national fund, in which they will have *no individual benefits*. Whether the Government can treat for the unsold lands or not, or whether they can or will purchase the reservations from a few chiefs, is not material; for if the certification is stopped, neither they can *sell* nor we *purchase*. Now, I pray you not to treat this lightly, for I have hastened Mr. Tarver off the morning after getting the news, that you may be put on your guard, and make the most of the time left you. It is important that you press this subject immediately upon the attention of Smith and the Griersons, so that they understand it, and let them spread it amongst the Indians. They have but one moon in which to save their lands. Better, by far, had they had their lands certified without receiving a dollar, and leaving it open to an arrangement with us, to be paid hereafter, when they are willing to sell, than thus to be cheated out of their rights. To Dr. Scott, I urge that he give up the beautiful Miss Jenny for the present; that he lay aside his poetry, come down from his stilts, and rouse up from his slothfulness, and spend one short month in unceasing energy and unwavering industry. To the Messrs. Craven, I beg that they will swear off from the society of ladies for one month, and make every *day* and *hour* of it tell profitably upon our business. And upon *you all*, I urge an immediate close of every contract upon which advances have been made, and the making of no more advances; for all contracts made and not closed will be dead losses. After this is done, the great struggle should be for the *most valuable* lands. Every man should now be at his post. Is there *no chance* to make an impression on those valuable lands in Tuckabatchee—say Little Doctor's, Yargo's, Mad Blue's, & Co.? If I were now with you, I would spend the month, and show you how much labor I could perform.

Yours, respectfully, &c.

ELI S. SHORTER.

To Dr. JOHN S. SCOTT, and
Messrs. M. M. and N. H. CRAVEN,
Fish-pond, Alabama.

CC.

COLUMBUS, *March 1, 1835.*

GENTLEMEN: I have just returned from Dr. McHenry's. When there, Yargo sold and certified his land to Dr. Billingslea for \$6,000, and then gave back \$3,000 of the money, and took a bond for the occupancy of

the land west of the river. I left at the agency Hayden and his son, General Woodward, Stone, McBryde, Collins, the whole Columbus company, and a host of others, with, I firmly believe, four hundred Indians hid out all around the hill. Certifications commenced late yesterday evening, and about sixty were taken through. The agent will be at home certifying, the whole of next week; and, in that time, most if not all of the land will be swept, that is worth a notice. I have the agent's promise to meet us at any place of our appointment on the Monday afterwards; and to obtain this, I have had to interest another man in our company, so far as it regards McHenry's district, and to give him one-eighth part. It is unnecessary to mention names; the thing was necessary, and was therefore done.

Now, if we are to do any thing, you must *instantly*, upon reading this letter, lay all other business aside, and gather up as many Indians who can be depended on as possible; and Corley or Craven, with one of the Griersons, must come on with them towards the agency in Chambers. The other, with the other Grierson, must remain behind, and collect and come on with another company. When you get within from 5 to 10 miles of the agency, stop where you can get water and provisions, and send a messenger to us at the agency, to let us know where you are, and we will meet you Monday morning with the agent, and proceed to business. Your messenger must reach us on *Sunday* night. Camp your Indians *out of sight of the road*. You need give yourself no trouble about the *value* of the land; I will arrange all that. *Stealing* is the order of the day; and out of the host of Indians at the agency, I do not think there were ten true holders of land. When I left, there were not more than eighty reservations left in all Tuckabatchee; they will all go to-morrow; then will follow Thlobthlocco, then Kialgie, then Oak-tar-sar-say, then Eufaula, &c.; and in two weeks the whole host of Philistines will be in your quarter; and, rely upon it, they will carry all before them.

Now Scott may wrap himself in his Indian blanket, and say all this is impossible; but *I* say it is not only *possible*, but *certain*. When I see such men, with so few advantages, getting so much valuable land at \$10 per tract, and see how much money *we* have paid out, the *power* we have had, and see the *quantity* and *quality* of land we have received, and particularly when I think of the *reason* why these things are so, I can almost tear my hair from my head. There is yet time to do something, but I almost despair of its being done. If Scott's Indian wife was at the devil, I should have some hope.

We shall go into the strife, and do what we can. If you will join us, well; if not, well. We have plenty of money. You need not come unless you will drill your Indians, and prepare them to receive \$10 *in the store* for every contract certified. Be sure to bring two old women, and, if you possibly can, be sure and bring Tallan-har, an old woman of Thlobthlocco town, who is the mother or mother-in-law of John Reed, an interpreter, who was killed last year.

The whole show will be up in four weeks from this time, and all the Indians who do not sell will lose their lands. This system has not been working more than three weeks, and upwards of 1,000 tracts have been certified. The stream is getting wider, deeper, and stronger every day. If things are to be radically altered *as to money* at Tallapoosa, I will

furnish funds in *paper money* to certify the balance ; if not, the Indians may be disbanded, and we will quit the drive, for I will stand the past-pull no longer ; and if Doctor Scott adopts the rule of settlement at the *certified prices*, it must be a good rule, and shall apply to *all cases*.

Respectfully, &c.,

ELI S. SHORTER.

To Messrs. JOHN S. SCOTT,

E. CORLEY,

M. M. & N. H. CRAVEN,

Tallapoosa.

DD.

COLUMBUS, *March 1, 1835.*

SIR : Mr. Corley gave me time to be there to close the trade with him until I could get out, or until they commence certifying. As my business in court is not settled, I am unable to say when I shall be there ; and if you have not closed the trade with Mr. Corley, you will do it for me, if you are not disposed to go into it ; but I prefer your connexion in the matter. There is nothing going on at this time but stealing of land with about fifty Indians. Pay them \$10 or \$5 when certified, and get all the balance back, and 400 or 500 contracts certified with fifty Indians, is all the game. Judge Shorter has just returned from Dr. McHenry's ; he states the different speculators have about 500 Indians hid out and certifying at night. Yargo is certified to ; without a rush, we are gone.

BENJAMIN P. TARVER.

James S. Moore was married on to-night. The judge thinks that the largest proportion, if not all the land that is before Dr. McHenry, will be certified on this week. Now is the time, or never ! Hurrah, boys ! Here goes it ! Let's steal all we can. I shall go for it, or get no lands ! Now or never !

BENJAMIN P. TARVER.

To Mr. M. A. CRAVEN,

Fish-pond, Alabama.

EE.

COLUMBUS, *March 25, 1835.*

GENTLEMEN : I intended to have started to the store in Tallapoosa to-day, but Judge Shorter thinks it best for me to stay and attend McHenry's office next week. I want you, so soon as you get this letter, to start Bailey and Wat Grierson over with as many Indians as they can start. I want them to be at the office with the Indians next Monday, if they can ; and as to the balance of you, you must be up and doing ; for I can assure you what we don't do before Tarrant the next week of certifying, will not be done by us ; for just as soon as they finish on this side of the Tallapoosa, every speculator will be over there. They intend first to get a part of that district cut off to McHenry ; and if they fail in that, they will take their Indians and go on ; for those lands are what they are after, and they will have them. They have rogued it and whored

it among the Indians, until I fully believe that, for the purpose of getting a piece of land, they would swear before Ahnighy God that the Indians in Russell county were located in Coosa. I think it necessary that one of you go down to Hatchechubba and Hickory-ground towns, and have the best of the lands valued, and ready for certifying; as that is the part of the country they intend stealing in. Gentlemen, don't lie on your oars with the belief that no man can do any thing with the Indians in that part of the country; for they have Indians of their own, and they will fetch them with them. The harvest is nearly over, and perhaps there will never be another such a one. I therefore think it necessary for us to be up and doing while it lasts.

Yours, respectfully,

ELIJAH CORLEY.

N. B. The judge says he thinks it best to put off the settlement with the Indians on that side until after the next week. There is plenty of money here ready, but we thought it best not to send it until there are two or three in company. M. A. Cravens must be certain to come with Wat and Bailey. The Indians killed old ——— last night, but for what cause we have not found out.

Yours, &c.,

E. CORLEY.

TO SCOTT & CRAVENS,
Tallapoosa, Alabama.

FF.

WAR DEPARTMENT, *May 7, 1836.*

SIR: By the 2d article of the treaty concluded March 24, 1832, with the Creek Indians, certain rights to land are secured to the Creek Indians. The mode of locating and conveying these is fixed by the treaty. Regulations were adopted prescribing the manner in which conveyances might be made. These required that the parties should appear before a certifying agent, who was to inquire into the nature of the contract, and reject it if he considered it fraudulent, but to certify it if he found it fair and just in all respects. The contracts were then to be transmitted to this Department, to be laid before the President for his approbation, under the 3d article of the treaty.

In the conveyance of these reservations by the Creek Indians, there have been many allegations of fraud. Instructions have from time to time been given for investigating such frauds. In the mean time, the action of the President has been suspended upon all contracts not previously approved by him. Three persons are now engaged in examining all those cases where probable grounds of fraud are shown, and where the President has not finally approved the contracts.

It has been the impression of the Department, that where the certifying agents have certified a contract as correct, the purchaser has acquired such rights as cannot be set aside without the decision and action of the President, under the power vested in him by the 3d article of the treaty; and thus, whether the contracts have been retained by the certifying agent or transmitted to this Department, I have supposed that the

final action required of the President on the subject of these contracts can only be exercised by himself, and that the power cannot be transferred to any other persons; but they may be authorized to collect evidence, in order to enable him to come to a decision.

It is stated, however, that there is a class of cases differing from these, in which the certifying agents have retained the contracts in their possession, but have not endorsed their approval upon them. I have the honor to request your opinion whether the persons authorized to investigate these alleged frauds can be empowered to set aside this latter class of cases, without referring the matter to the President, and upon such evidence as may appear to them to be satisfactory.

And I have also to request you to inform me whether you consider the views herein stated, with relation to the contracts approved by the certifying agents, correct.

Very, &c.,

LEWIS CASS.

HON. B. F. BUTLER,
Attorney General.

GG.

ATTORNEY GENERAL'S OFFICE,
May 9, 1836.

SIR: I have had the honor to receive your communication of the 7th, and have considered the same.

When the certifying agents have retained the contracts in their possession, but have not endorsed their approval upon them, I have no doubt the persons employed to investigate the alleged frauds may, upon such evidence of fraud as shall be satisfactory to them, set aside the contracts without referring them to the President. The certifying agents, not having approved the contracts, nor completed their investigations, might certainly have done this; and I consider the persons specially appointed to inquire into these matters as succeeding to the powers, and taking the place, of the certifying agents.

In my opinion, the views stated in your letter, in respect to the other points therein mentioned, are entirely correct.

I am, sir, &c.,

B. F. BUTLER.

HON. LEWIS CASS,
Secretary of War.

HH.

Extract of a communication from the Commissioner of Indian Affairs to Dr. McHenry, dated September 26, 1835.

"Until you are otherwise instructed by this department, you are requested to suspend all recertification of contracts for land made prior to the 28th of April last."

Extracts of a letter from the same officer to L. Tarrant, Esq., dated October 28, 1835.

"You will, therefore, resume your duties as certifying agent under the instructions heretofore given, confining yourself to those cases which have never before been certified by you, and which of course excludes all recertification." And in a letter of the same date to Colonel J. B. Hogan, the same officer says, "Judge Tarrant and Dr. McHenry have been instructed to resume their duties as certifying agents in those cases of contracts which have never before been certified by them, and in no event to recertify contracts."

II.

Extract of a letter from the Commissioner to Dr. McHenry, dated December 1, 1835.

"Although you have been heretofore instructed not to certify in any case, it was intended to be with this exception: that in those cases where the purchaser and seller were willing to vacate and surrender the contract, you might certify to a new contract, because the owner would then appear before you with all his original right to dispose of his land, as if no sale or pretended sale had taken place."

KK.

Extracted from instructions by the Secretary of War to Colonel John B. Hogan, dated 15th of January, 1836.

"Contracts will be certified agreeably to the previous regulations, in all cases where no contracts have been before entered into for the sale of the lands. But no contract will be declared void except by the final action of the President, nor will any recertificate be granted but in that event; with the exception, however, of those cases in which the parties mutually appear and admit that the contract was a fraudulent one. Such admission will be reduced to writing, and signed by the parties; after which, a new contract will be certified. The admission, so signed, will be transmitted to this Department."

LL.

WAR DEPARTMENT, *January 23, 1836.*

SIR: The Commissioner of Indian Affairs has laid before me your letter of the 11th instant, in which you suggest that the Creek contracts which are declared by the parties to be fraudulent ought not to be recertified until your general report is made. The consequences to which you advert render this suggestion proper, and I think the course which

you recommend to be ultimately adopted is the correct one. You will, therefore, abstain from recertifying any such contracts for the present, and the other certifying agents will receive similar instructions.

Very, &c.,

LEWIS CASS.

Colonel J. B. HOGAN,
Columbus, Georgia.

*Report of Alfred Balch, on the frauds charged to have been perpetrated
in the transfer of Creek Indian lands.*

JUNE 2, 1838.

On the first day of July, 1836, the House of Representatives of the United States passed the following resolution: "*Resolved*, That the memorial of certain citizens of Alabama and Georgia, respecting alleged frauds in the purchase of the reservations of the Creek Indians, and the causes of their present hostilities, be referred to the President of the United States; and that he be requested to cause such measures to be taken for investigating these transactions, and for the prosecution of the persons engaged in them, who may have been guilty of any breaches of the laws, as may appear to be proper, and within the power of the Executive."

Under the authority communicated by this resolution, the colleague of the undersigned, and himself, were appointed commissioners to perform those duties which were deemed necessary by the Executive to the attainment of the objects of the representatives of the people at the time said resolution was adopted. More than a year ago the undersigned and his colleague submitted their report upon the causes of the hostilities of the Creek Indians against the whites, which broke out in the spring of 1836 in the Creek country. Having discharged this part of their trust, the attention of the undersigned was directed to the performance of the more difficult and laborious duty of inquiry into the frauds alleged to have been perpetrated in the sale and purchase of the reserves allotted to the Creeks under the treaty with that tribe of the 24th of March, 1832.

In order fully to understand this subject, it is necessary to cite certain provisions of this treaty, and to explain the condition of the rights and interests of the Creek reserves at the time when the undersigned and his colleague commenced their investigations. In this treaty it is declared as follows:

"Article 1st. The Creek tribe of Indians cede to the United States all their land east of the Mississippi river.

"2d. The United States engage to survey the said land, as soon as the same can be conveniently done after the ratification of this treaty; and when the same is surveyed, to allow ninety principal chiefs of the Creek tribe to select one section each, and every other head of a family one-half section each; which tracts shall be reserved from sale for their use for the term of five years, unless sooner disposed of by them.

"3d. These tracts may be conveyed by the persons selecting the same to any other persons, for a *fair consideration*, in such manner as the President may direct. The contract shall be *certified by some person* appoint-

ed for that purpose by the President, but shall not be valid till the President approves the same."

As soon as it was practicable, these reserves were surveyed and allotted to the reservees. The whole number so assigned was about six thousand five hundred. The country in which these lands lay was divided into three districts, and a certifying agent appointed to each. The persons selected were Leonard Tarrant, Robert W. McHenry, and John W. A. Sanford.

It will be perceived that the foregoing provisions of the treaty were intended to guard the Indians against the effects of their ignorance and improvidence, as well as against the secret devices and open frauds that might be practised upon them by unprincipled white men. A few sales were made by the locating agents, Colonel J. J. Abert and James Bright, Esq., with all that circumspection and fidelity for which both these individuals are so justly distinguished.

In order, however, that the articles of the treaty might be fulfilled favorably to the Indians, and faithfully by the Executive, acting as a trustee for them, the following regulations for the government of the certifying agents were adopted by the War Department, copies of which were duly transmitted to them:

Regulations for certifying contracts under the Creek treaty of March 24, 1832.

WAR DEPARTMENT, November 28, 1833.

1st. All applications for certifying contracts under the above treaty, in order to procure the assent of the President to the conveyance, shall be made in writing, and shall be accompanied with the written contract itself.

2d. If the payments are all made to the satisfaction of the Indian, and the fact is clearly established, in the opinion of the approving agent, then an absolute deed from the Indian to the white person may be certified.

3d. But if the payments are not all made at the time the parties appear before the approving agent, then the contract must distinctly state the time and mode of payment, and the amount actually received.

4th. As a general rule, no contract will be approved unless a consideration equal at least to one dollar and twenty-five cents per acre is paid or secured to the owner.

5th. In all cases the agent will make such inquiry as may be in his power into the actual value of the tract; and if he believes that such value is not paid or secured, he will not certify the contract.

6th. As, from representations recently received from one of the commissioners appointed to make the locations, it appears that many of the tracts are not so valuable as has been heretofore supposed, nor probably worth the minimum price fixed for the public lands, the President does not think it just that that sum should be actually paid in every case. When, therefore, a less sum is agreed upon between the parties, the approving agent will endeavor to ascertain the actual value of the tract, and, if he believes the amount agreed upon is a fair price, he will so certify; and his certificate will also contain a general description of the tract, agreeably to the best information he procures. In all cases arising under this section, the circumstances will be particularly examined by the President, whose decision will be made as may appear to be just.

7th. The agent shall, in every case where it is practicable, have an interview with the Indian, explain to him the transaction, and ascertain whether he understands and approves it on a full consideration of the matter.

8th. When, however, the Indian cannot appear before the approving agent, in such a case the clearest proof must be adduced of the nature of the transaction; and the return must show the proof, and must also state why the Indian was not present.

9th. No patent will be granted until the whole payments are completed.

10th. Copies of the contracts, to be furnished by the parties themselves, will be retained by the approving agent; and the originals will be transmitted to this Department for the consideration of the President.

11th. The approval of the agent will in no case be final, nor will the title of the grantee be valid, until the President approves the same. Possession, however, may be taken of the tract as soon as the agent certifies the contract; but, in such a case, the party will be liable to removal if the President should decline to approve the same.

12th. A contract for any tract may be certified as soon as a proper locating agent shall assign it to an individual Indian. Still, however, it is to be observed, that if the President should not confirm such location, the whole proceeding with relation to it will be void.

13th. The ceded territory must be so divided by the approving agents among themselves, that each may be confined in his operations within a given district, so that applications rejected by one agent may not be acted upon by another.

14th. The following is prescribed as the general form of the certificate, subject to such variations as circumstances may require:

"I certify that I have examined the contract between A B, a Creek Indian, and C D, for the conveyance to the latter of [here describe the tract agreeably to its designation on the plat of the township;] that the said A B has appeared before me, and, after the transaction was fully explained to him, approved the same. The sums stated to have been received by him were paid in my presence, (or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be.) I consider the price given the full value of the land, and certify the contract for the consideration of the President of the United States."

Where the Indian is prevented by proper circumstances from appearing, then the certificate will be varied so as to show those circumstances, and the nature of the proof by which the payments are established.

Where the price agreed upon is less than \$1 25 per acre, the agent will add to his certificate a statement that "the land is proved to my satisfaction to be of an inferior quality, (being sandy or marshy, or containing so many acres only which can be cultivated, or specifying any other facts which may have come to his knowledge showing its quality,) and that I consider it worth only [here insert the sum]."

LEWIS CASS.

Approved, 28th November, 1833:

ANDREW JACKSON.

Supplementary regulations, in addition to those approved by the President November 28, 1833, for certifying contracts under the Creek treaty of March 24, 1832.

WAR DEPARTMENT, December 18, 1833.

In consequence of a representation from one of the certifying agents that a construction would be put on the above regulations which would inevitably lead to the committing great frauds upon the Indians, in consequence of the facility of imposing on them, and the ease with which declarations or acknowledgments may be procured, the President is desirous of guarding against such a result as far as in his power, and of securing to every Indian the receipt of a just consideration for his property. The following additional and explanatory regulations are therefore adopted :

1st. The payments required by the 2d article of the above regulations must be made in the presence of the approving agent, except in the very few cases where the Indian may be prevented by illness or inability from appearing before the agent. But such cases must be proved by the most unexceptionable evidence, as well as the payments made under them; and the circumstances must be distinctly stated for the consideration of the President.

2d. The contract described in the 2d article of the above regulations must be entered into subsequent to the location of the reservation.

3d. The form in the 14th article will be so varied as to omit the words "or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be," except in the cases described in the 1st article of these supplementary regulations, where the Indians are prevented by disability from personal attendance.

LEWIS CASS.

Approved, December 18, 1833:

ANDREW JACKSON.

Early in the year 1834, Judge Tarrant, Doctor McHenry, and General Sanford entered upon the performance of the duties with which they were charged. Very soon after the first sales under the authority of these agents were made, the purchasers commenced the practice of frauds upon the reservees. McHenry acknowledges this fact in his letter of the 12th of March, 1834: (See Doc. House of Representatives, session of 1835-6, No. 274, page 116.)

COLUMBUS COUNTY, (ALABAMA,)

March 12, 1834.

SIR: I have had the honor to receive your letters, one of the 17th and the other of the 21st of February, on the 11th instant, requesting me to furnish you with such information as lay in my power respecting frauds which have been practised upon the Indians. I have no doubt but some of the Indians are swindled out of a part of their money, and there is but one way to remedy it; and that is, to deposite one-third or one-half of the amount of the money their land brings, in bank, to be paid over to them when they emigrate, and let them pay off their debts with the re-

mainder, for they are very much in debt. If I have certified to a contract where it was a special understanding between the parties that a part or all of the money was to be refunded, I do not know it. I have used every means in my power to detect any thing of the kind. There have been two instances where the wrong Indian was brought before me for the purpose of getting their contracts confirmed, but they did not succeed. Whether it was done through ignorance, or with a design to defraud, I am not at present able to determine.

At the time Mr. Howard wrote the letter which you transmitted me a copy of, I had certified to about ten or twelve contracts—five or six for General Woodward, and the same for Mr. Cook. I think those Indians were honestly dealt by.

On the 18th, 19th, 20th, and 21st of February, I was at Fort Hull, and certified to a large number of contracts. This was subsequent to the date of Mr. Howard's letter. I saw nothing like fraud there. The firm of Haden & Centre paid in the same bills three different times. I stopped certifying for them, and, in presence of the company, called on them for an explanation. They immediately produced receipts against a number of the Indians they had purchased from to considerable amounts, which they acknowledged to be correct. The receipts were also witnessed by two white persons; the different amounts had been paid in their presence previous to their contract being certified to—some one or two years before. The firm stated, the Indians had paid them back what they had already advanced them. They have had a store in the nation for the last two or three years; they have furnished the Indians with clothing and provision to a considerable amount; and a large number of them owe them considerable amounts of money. I have previously written to you respecting the firm of Doyle, Islands, & Stand; I will further add, from the best information I can get, they borrow the money back from the Indians, and give them their notes for the amount, to be paid when they sell their lands, or when they emigrate to Arkansas. By this means they are contracting a debt with the Indians, which they are not worth one twentieth part of, and have it completely in their power to swindle them out of their lands. I suppose, if they would act in good faith towards the Indians, it would be three or four years before they could sell the lands, consequently would prevent emigration; for they would not leave until they would get their money.

I was at Columbus a few days since. General Sanford stated to me that in several instances they had produced the wrong Indian, and he had certified to the contract, and he had since detected it, and was investigating some of them when I was there. I am extremely cautious, and examine every case strictly. I have for some time back required respectable persons and good judges of land to go and examine each tract, and state on oath what they think the land is worth.

I have the honor to be your obedient servant.

ROBERT W. McHENRY,

Certifying Agent.

Hon. LEWIS CASS, *Secretary of War.*

On the 12th of February, 1835, (see same document, and page 129,) McHenry writes to the Commissioner of Indian Affairs, "Owing to some frauds that have been practised upon me, I have not forwarded any contract for some time."

On the 16th March, 1835, (see same document and same page,) Hopthloholo and other chiefs write to the Secretary of War as follows:

TUCKABATCHEE TOWN, *March 16, 1835.*

We, whose names are hereunto subscribed, being head chiefs of the Creek nation, humbly petition your intervention to stop fraud being practised upon our people. It has become notorious that we are daily having our lands stolen from us by designing white people.

The Indians living on the east side of the nation have long since disposed of their lands, and are now following the agents in our section of country, with a band of white speculators, claiming other Indian names, and having undisposed-of lands certified to. This course of conduct has been introduced about twenty days ago, and has succeeded in getting all unsold land, except such of the Indians as the agents are personally acquainted with. A number of our people have died since being located: all such cases are stolen by living Indians, through the influence of white men. We believe, without your interference, justice will not be had. We pledge ourselves that every statement here made can be established by disinterested white people. During the last ten days we have no doubt that hundreds of Indians' names have been stolen and certified to, when the right owners were at home and knew nothing of such contracts.

We now humbly beg for an investigation to be had, and for the white people making such purchases to be requested to produce the Indian before the agents, so that such Indian, having a just right, may have an opportunity of establishing his just claim. This course will bring round an opportunity of introducing correct proof. We find that such Indians as are stealing get but a small pittance in comparison to the fair value; for the lands are certified to any large prices, and the money immediately taken from them, telling the Indian that it is likely this contract will not be approved of.

We sincerely petition you to adopt some plan whereby justice may be had. We will ever pray, &c.

Your red brothers,

HOPOTHLOHOLO, his + mark.

YOUNG KING, his + mark.

TUSKENEAHHAH, his + mark.

LITTLE DOCTOR, his + mark.

FOSACHE MICCO, his + mark.

LATTAH MICCO, his + mark.

OLD KING, his + mark.

MICCO OBOY, his + mark.

To the HON. SECRETARY OF WAR.

On the 23d of the same month, these chiefs and many others addressed an affecting letter to the agent, McHenry, which is as follows:

COOSAWDA, *March 23, 1835.*

OUR DEAR BROTHER: We, the undersigned, chiefs and headmen of the Creek tribe of Indians residing east of the Mississippi river, in general council assembled, deem it due to ourselves, to you, and to our people, to make known to you the situation in which some of us, and many of our

people, have been placed, by frauds which have been practised upon us in the certification of contracts for land.

We had fondly hoped, sir, that after we had sold our territory to the United States, reserving our humble homes, that we should have been permitted to enjoy them unmolested; or at least, if we should be compelled to sell them, the small pittance arising from the sale should belong to us and to our children. But, sir, in this we have been mistaken. We were informed by our great father, at the time we entered into the treaty by which we sold our country, that when we should sell our reservations he would appoint men to superintend the sale of them who were too high-minded and honorable, and too far removed from vulgar prejudice and sordid attachment, to countenance, in the smallest degree, any frauds that might be attempted to be practised upon us; and in order to consummate this promise, you, sir, were selected as one of those men. We, sir, were pleased with your appointment, and yet esteem you as a man who desires to do us justice; but we must assure you, in the language of respectful friendship, that the course recently pursued at your office is such as incites our disapprobation, and is calculated to oppress and ruin some of our people. We write this, therefore, to you, not to censure you, but to apprize you of facts which we are bound, in justice to ourselves, to communicate. The causes of our complaints are the following: We learn that almost all the land in your certifying district has been sold, and what is not sold is protested; that is, some person has purchased and has not brought forward the reserves for certification. Now, sir, we assure you of the fact, that there has been at least one-third of the contracts for the sale of lands in the towns of Tuckabatchee, Thlobthlocco or James Boy, Clewalla, Tallassee, and Otisee, that are fraudulent, and the land certified to the wrong Indian. There are also many other contracts of a similar character in other towns. We wish not to be understood as charging you with having wilfully certified contracts to wrong Indians, although the voice of a part of the community cries out against you. We only wish to state these frauds do exist, and to excite you to vigilance and perseverance in detecting them. In what kind of predicament, sir, are we placed! An Indian, sir, who has sold his land at the instance of some fiendish, designing scoundrel, comes before you and claims the name of another Indian to whom the land rightfully belongs; the money is forthwith given up to the purchaser, save that portion which was to be given to the Indian as a premium for his rascality. In this way, sir, a few hundred dollars and four or five Indians could sell all the land in the Creek purchase, and we know in this way hundreds of contracts have been made. The homes which have been rendered valuable by the labor of our hands are torn from us by a combination of designing speculators who haunt your office, and who, like the man among the tombs, are so fierce that no one can pass that way. The helpless widow and orphan, the aged and infirm father, are alike the victims of their cupidity. Sir, we have borne with this oppression until forbearance has ceased to be a virtue; and we are determined to speak out, let the consequences be as they may. While we have been at home, preparing something for our dependent families to subsist on, other Indians have sold our homes, our all, the only means for our support; and when we have applied to you for redress, what has most frequently been the result? Why, sir, that you would inquire into it. You place the burden of proof upon us; you

exclude the testimony of our people, the only persons who can know much satisfactorily in relation to our claims. We are required to prove a negative—that we have not been the person who sold; all of which we assert is oppressive. And although we have the charity to believe that you do not design these things to injure us, yet we must state, if persisted in, they will work our destruction. But worse than all this, and more to be regretted, is the fact, through fear of the merciless horde who surround your office, our people cannot speak to you in defence of their just rights, without subjecting themselves to punishment.

Sir, we again repeat that we believe you are inclined to do us justice; and under this belief we rest satisfied that you will adopt some speedy and efficient means of detecting and exposing to the world the base frauds which have been practised upon yourself and us; and, in conclusion, we would humbly suggest, that the deeds which have lately been certified by you, (say within the last thirty or forty days,) be retained, and that they undergo an investigation, and that hereafter the purchaser or his agent be required (as is done elsewhere) to make oath that he believes the Indian from whom he has purchased is the Indian located on the land sought to be purchased from him. We have thought that the condition in which our people have been placed required that we talk thus plainly to you; and in order more effectually to secure the protection desired, we have sent a communication similar to this to our great father the President of the United States.

On the 25th of March, 1835, McHenry wrote to the Commissioner of Indian Affairs as follows: (see same document, page 134.)

COLUMBUS, (GEORGIA,) *March 25, 1835.*

SIR: General J. W. A. Sanford gave me up his book on the 23d inst. There are but a few contracts remaining uncertified to on his books.

I wish you to retain the last packages of certified Creek contracts for a short time, for I have no doubt but the wrong Indian has been introduced and certified to in several instances. I have a number of certified contracts remaining in my own hands, which I shall investigate. I have never seen corruption carried on to such perfection in all my life before. A number of the land purchasers think it rather an honor than a dishonor to defraud an Indian out of his land; and if the agent cannot detect the fraud in passing the contract, he cannot prescribe an oath which they will not take. I do not wish you to understand that all purchasers are so corrupt, for I believe, in many instances, the purchaser has bought, as he believes, from the right Indian; for you find them roving all over the country, assuming different names, and selling lands which do not belong to them, and make it matter of speculation.

If the proper course is pursued this season by the emigrating agent, I think a thousand or fifteen hundred Indians will go to Arkansas.

My own opinion is, if the Government would pay off the annuity immediately, and insinuate to the head chiefs that it was the last that would be paid off here, they would emigrate in a mass.

Very respectfully, your obedient servant,

ROBERT W. McHENRY.

E. HERRING, Esq.,

Commissioner of Indian Affairs.

It will be seen that McHenry here charges these people with the commission, not only of frauds, but with a willingness to commit any sort of perjury, in order to effect their criminal designs.

This documentary evidence, and much more which it is unnecessary to lay before the honorable Secretary, created in the mind of the undersigned a settled belief that a disgraceful system of swindling had been practised upon the Creeks in the pretended sale and purchase of their reserves in McHenry's district, by a large number of persons united together for that purpose. The President and Secretary of War were informed of the existence of these frauds. McHenry was directed to cease from certifying, by a letter of the 28th of April, 1835, and to investigate the complaints that had been made.

He proceeded to the performance of this duty, and reported that he had reversed upwards of three hundred claims. But the Secretary of War was not satisfied with the partial inquiries of McHenry, and Colonel J. B. Hogan was appointed to examine into the alleged frauds. Colonel Hogan was fully qualified to perform this unpleasant task, possessing, as he did, honesty, energy, industry, and impartiality. He reported six hundred and fifty-six frauds upon the Indians in McHenry's district, being nearly one-third of the whole number of reserves laid off to the Indians in that district. When Colonel Hogan made his report, objections were taken thereto, more formal than substantial, in the judgment of the undersigned, and this agent was ordered to make a reinvestigation. But, before he was able to do so, hostilities were commenced by the Creeks, and nothing more was done by that vigilant and faithful public officer. It was in this condition of affairs that the undersigned and his colleague were ordered to repair to McHenry's district, and finish, if practicable, the work which Colonel Hogan had begun. They were furnished by the Commissioner of Indian Affairs with all the foregoing evidence, and much more of the same character, together with copies of the reports of the agents, McHenry and Hogan.

About the time when the undersigned reached the Creek country, the great body of the Indians commenced their march for Arkansas. From them it was impossible to obtain any valuable information on the subject of the frauds which had excited so much feeling in every honest bosom in that quarter. Whatever additional testimony it might be possible to reach, must either come from the guilty claimants themselves, or from white men who were personally acquainted with the recent transactions so loudly complained of. It was ascertained that several persons of respectability were willing to come forward and depose to such facts as they knew, touching the frauds practised before McHenry. The depositions which they gave are as follows:

THE STATE OF ALABAMA, *Chambers county* :

Deposition of Arnold Seale, taken before Felix Stanley, an acting justice of the peace in and for said county, to be read in all cases to which it may apply, which are now pending before Thomas H. Crawford and Alfred Balch, Esquires, now sitting as commissioners to investigate the frauds alleged to have been committed in the sale of Creek Indian reservations, &c.

This deponent, being duly sworn, deposes and says: That he resided at the office of Dr. McHenry during the time he was certifying Creek Indian

reservations, and was acquainted with most of the traders who were purchasing Indian land in the Creek country. Some time in the month of February, 1835, he learned, by report, that persons were stealing land at Columbus, before General Sanford. A short time afterwards, McHenry was called on by the Columbus company to go down to the lower part of his district to certify contracts. On his return, he informed me that he had certified a great many contracts during that trip below. He also informed me that in a few days there would be a great many Indians brought up to be certified by the people from Columbus and the lower part of the district. Accordingly, in a few days they began to pour in from different quarters, and I found there was a great confusion among them, before they would commence certifying in relation to their Indians. I ascertained from Thomas S. Woodward and others their plan of operations. Woodward stated that they should not certify until they had made arrangements with him. He afterwards told me they had done it; that he was not to certify any lands to the company, but that he was to be silent, and was to draw an equal share with them. There were to be ten shares in the company, as they afterwards informed me; they reported two men to each share. I do not now recollect all of their names, but, so far as I do recollect, they were D. McDougald, General J. C. Watson, N. M. and D. Thornton, Columbus Mills, Luther Blake, McDaniel, J. A. Hudson, Woodland, Walker; and the two Fitzpatricks were to draw the tenth share; there were also Paddy Carr, J. G. Worsham, E. S. Shorter, and I think Peabody and Hale; the balance I do not now recollect. They informed me that they had other men operating for them on shares; that they furnished Wadsworth with money, and also Chamberlain and others. It appeared that Shorter, B. P. Tarver, the Scotts, and E. Corley formed another company; and Milton J. Tarver, Job Taylor, Johnson, and Hargroves another; and George Stone, Brooks, Strange, McBride, Mitchell, the Hadens, J. J. McCrory, the Cravens, John McQueen, and Samuel Williams all appeared to be active operators, and, I believe, certified a great many contracts during the land-stealing.

A good many contracts were certified to A. J. Robinson & Co. Robinson, it appears, was interested in different companies. One part of A. J. Robinson's contracts it appeared that Williams, Gilder, and Vann were interested in, which contracts Vann has informed me that he held them and would not give them up, nor suffer them to be sold by Robinson. Some time in the early part of March, 1835, the land-stealers were crowding into the office by droves, and certifying contracts very fast, and it appeared as though they would steal all the Indian lands. They seemed to carry on the business in the way of sport, and Wadsworth toasted a little crowd, in my presence, "Here's to the man that can steal the most land to-morrow without being caught at it." About this time I opposed them and got into a difficulty, when Hargroves threatened to kill any man who would oppose them; that he believed that every man who was trading with the Indians was stealing lands; that he was, and that I was a fool if I did not go into it. I then informed the agent that they were stealing the land, and boasted of it in my presence when he was absent. McHenry then closed his book on them, and refused to certify for one day. There were various propositions made to me by different members of these companies, some to join them, and some not to oppose their contracts. Dozier Thornton proposed to give me the best section of land he had in the country if I would pass by (that is, not oppose) the contracts when his name was read.

against a stolen contract. At this time I begged him to quit the business, as it was too base for any honest man to be engaged in. Nat. Macon Thornton tried me at different times to get me to join them, setting forth different reasons; one was, that our Government was sunk, and nothing but money could bear a man up after this time; another was, that it was better to give an Indian ten dollars than one thousand, as money only proved a curse to Indians; another was, that he respected me and wished me to make a fortune while it was in my power, that now was the time, and I must be simple if I did not go into it. I was tried by Thomas S. Woodward at different times; he stated that I was very much in their way, and that, if I was out of the way, they would not ask the balance of the company any odds. He wanted to know what I would take and quit the country, and not operate any more in the nation. I replied that I would take five thousand dollars, which he thought was a small sum; but I required of him that they should give up all the lands they had stolen, and bind themselves not to steal any more; which he would not agree to do. I then informed him that their company was not worth money enough to put me down. After this, McDougald came to me to make arrangements with me, and we agreed on the terms of a compromise, which were that he and his company were to give up all their stolen contracts and guaranty to me and my company the right of buying and recertifying the true Indians. William Dougherty and myself went to Columbus, and drew up articles of agreement to that effect, and presented them to the company; when D. Thornton objected to sign them, for the reason that it would be an open confession of having stolen the land, and that they had some regard for character; and the compromise was not effected. McDougald seemed to be anxious, and stated to me that he was willing to pay the right Indians for their land, but that the business had become dull, and they had adopted this plan to bring about a reaction, and cause the true owners to sell their lands. I informed those men that this land-stealing would cause innocent blood to be shed; that the Indians were declaring daily that they would kill any white man who would come and settle on their lands, as they had never sold their land; and I informed them that innocent families would be the sufferers, as they would buy the land and would move on it. I feared that it would cause the innocent to be killed, as the Indians would kill the man that would take possession of their land; but they would not cease from the evil of their ways.

This deponent further states, that during this certifying of lands there were a large number of contracts which appeared from the books to be certified to Thornton and others, with the true owners of which this deponent was intimately acquainted; he states that he was in and about the office daily, and did not see these Indians on the ground. Witness further states that he kept provisions for sale, and that those companies of land-stealers did buy a large quantity of provisions and furnish the Indians with them, both at the office and in the camp; it seemed to be almost impossible to keep a supply, as the number was so great at some times. There were, I think, from four to five hundred, and from that to one thousand Indians in their camps. Witness states that he was acquainted with some of the Indians belonging to the upper Ufaula town. Nioke was one who was located to S. 7 21 22; this Indian's land was stolen. Pascoaf Hadjo, who was located to W. 9 20 24; this case was given up by N. M. Thornton, and was recertified to J. J. Kidd in my presence.

Jonathan A. Hudson and D. Thornton did give up the S. 12 16 24, which was located to an Indian named Talliah, of the Coosawda town: this contract was afterwards recertified to witness and J. A. Hudson. James Abercrombie, after hearing the statement of the witnesses, gave up the case of Simnecar, who was located to W. 1 17 23; he stated that he did not know the Indian, and that he had been imposed upon, and would not contend for the land; afterwards it was recertified to deponent. N. M. Thornton gave up some contracts, that were afterwards recertified to Washburn. Witness states that he has seen various contracts given up by various persons. Deponent states that he did attend the investigations in McHenry's district, strictly, and generally with a strong company; that the company pledged themselves that there should be a fair investigation. The company was strong, because there had been various threats made by the land-stealers to kill some, of both whites and Indians, who should try to break up the stolen contracts. Deponent knows that Dr. McHenry gave public notice of the time and place of holding the investigations. Deponent saw advertisements to that effect at different times and various places, notifying all persons interested to attend to their claims; and he knows that many of the land stealers did attend, and some of them seemed to be willing to give up their stolen contracts. They stated that they were driven to the act by the Columbus company, that they had made advances to the true holders of the land, and they had to adopt this plan to secure their advance-money. Deponent states that among these were Job Taylor, George Stone, Philip Fitzpatrick, and Thomas S. Woodward: these all seemed willing to give up their stolen contracts, and were rebuying of the right Indians and recertifying them. These men stated to me that they did oppose this plan of operation, but could not put it down. Deponent has seen Woodward point out contracts to Dr. McHenry on his book, which he stated were stolen; that he knew the right Indians, and knew they had not been introduced before the agent; that he was interested in the contracts, though his name was not known, and that he felt authorized to give them up. Deponent further states, that he attended the investigations held by Col. J. B. Hogan, in Sanford's district, with the exception of a few days. He knows that Col. Hogan gave public notice of the time and place of holding his investigations, and called on those complained of, when they were present, to make their defence if they had any. These persons were very often present. Deponent states, that the first investigation he attended in Sanford's district was held at Fort Mitchell. The Indians seemed to be backward in coming up before the agent. Witness states that he was in and about the camps, about a mile from the place, where there seemed to be several hundred Indians. The Indians stated they were furnished with beef, by Paddy Carr, Mills, Blake, and, I think, Hudson. Thy further stated that they were told by these men not to go before Hogan to complain, that Hogan only wanted to enrol them to send them off to Arkansas. Witness states that he found the land-stealers very strong. Witness did not expect that justice could be done, in consequence of their influence; and he returned to Chambers county, to make up a company, and to get interpreters, which he did, and then returned to Sanford's district. Before deponent got back, Colonel Hogan had left for Irwinton. About this time a difficulty occurred between the Indians and some of the Columbus people, down on the river: as deponent thought, it was got up for the purpose of stopping the inves-

tigations. From the time I returned with my company, I continued with Col. Hogan through the investigations. Deponent states that he was informed by Col. Hogan, when he arrived at Glenn's, on the Hatcheehubba, that Dr. Mills stated he would go to Columbus and raise McDougald's company and drive me and my company off, at which place Col. Hogan investigated and reversed a good many contracts. From thence Col. Hogan, deponent, and others went to the Cowiga, near Gibson's, and Col. Hogan there investigated and reversed some contracts. But a great many Indians, it seemed, were influenced by these land-stealers, and kept off. This I learned from the Indians themselves. From thence, Col. Hogan returned to Fort Mitchell, and sent by me the notices for holding an investigation in the Tonanulgar town. I went there and remained until Hogan returned, and he then commenced the investigation again, when he found very strong opposition from McDougald's company. It appeared that Mills, Blake, Hudson, and Paddy Carr, had the Indian chiefs well drilled to force the common Indians to go up and state that they had sold their lands to some of the company. Deponent heard some of the Indians, when interrogated by the agent, state that they had not sold their lands; when the chiefs would speak and tell them they must not say that, but they must say they had sold to some of that company. It seems that Paddy Carr and some others were kept out constantly drilling the Indians. Deponent heard Dr. Mills, through his interpreter, drilling an Indian. When the Indian asked Mills what he must say when he went before the agent, Mills told him he must say he had sold his land to him, (Mills.) Deponent recollects one case that occurred during the investigation. The Indian denied having sold his land, when Hudson or some of the company claimed the land. Col. Hogan told them to make some showing to establish their claim, and they made none. Col. Hogan then reversed the case. After this, Hudson took the Indian out and drilled him until, I suppose, he thought the Indian would confess that he had sold his land. It appeared that Hudson had given the Indian a written paper permitting him to live on the land, and then came back with the Indian before the agent. Hudson stated to the agent that he thought if he (Hogan) would interrogate the Indian again, he would acknowledge that he had sold his land. Hogan then called on the Indian again, at which time the Indian presented the paper; Col. Hogan asked him who gave him the paper; he answered Hudson, and pointed at him. Hogan then asked him again if he had sold his land to Hudson, when the Indian answered no. Hogan, as well as I recollect the question, asked him what that paper was for; the Indian then stated that he might live on the land, and Hudson would save his land for him. The Indian stated to the agent that Hudson had promised him that he would drive the white people off, and he should have his land again. Hogan, at this, seemed to get into a passion, and, I think, tore up the paper and told the Indian that it was of no account, and that the land was his own. Hogan then addressed the white people, and stated that this contract stands reversed, and cautioned those land-stealers against such a course of conduct with the Indians. Hogan met the Indians the next day near Chapman's store, when McDougald and his company opposed him very strongly. They had some difficulty and short words, but Hogan investigated and reversed some contracts. I then left, and went to the store of Chapman, where, as I was informed by Col. Hogan and others, Daniel McDougald took out of

his saddlebags several hundred dollars in silver, and strewed it on the ground, and set the Indians to picking it up, as a breaking-up show of that investigation. Hogan then left for Tuskegee, and Major Abbott set out for the Opilike, Oswitche, and Chowockolo towns, to investigate. Deponent having heard that the land-stealers had sent an Indian and a white man ahead to drill the Indians before the agent got there, a part of deponent's company pursued them, overtook them, and broke them up, and the investigation was conducted in good order; and a great many contracts were reversed, and deponent thinks justly. These transactions took place, as well as deponent remembers, in February, 1836.

Cross examined:

Deponent states that he understands enough of the Indian language to converse with them. The statements which he has deposed to as having been made to him by the Indians, relative to their being told not to go before Hogan, were made in that language. He further states that at the investigations by Colonel Hogan, in Sanford's district, he told the Indians, on all occasions, if their lands had been stolen they ought to go before the agent and complain. He also states that after Hogan commenced his investigations in Sanford's district, he formed a company, and went round for the purpose of seeing justice done, and for the purpose of buying up land that had not been sold, and such contracts as should be reversed by Hogan. The company made but few purchases in Sanford's district.

Re-examined by district attorney:

Deponent states, that among other Indians with whom he had the conversation referred to in his direct examination, were Oakfuske Yoholo and Cussitaw Micco; these Indians were Cussitaw chiefs, but resided in the Secharlecha town. These chiefs stated that they had been sent for by Paddy Carr, and, as well as deponent recollects, by Blake, Mills, and McDougald, to use their influence to prevent the Indians from going up to complain before Colonel Hogan. They stated they had been instructed by these persons to tell the Indians that Hogan could not give them back their lands, but only wanted to enrol them to carry them off to Arkansas. These chiefs had a good many relations residing in the Tonanulgar town, and were supposed to have great influence over that town. Deponent further states, that while in Sanford's district, and before the investigation was closed, Luther Blake came to the camp where this deponent was staying with others, and in a conversation between the said Blake and John J. Williams, who is now deceased, Blake admitted and said that he had made arrangements with the Indians residing on the Uchee creek, meaning, as this deponent understood, the Tonanulgar and Wartoolarharka towns, to go before Hogan and acknowledge that they had sold their lands, and had promised them, if they would do it, they should eventually be paid for their land. Blake further stated that he intended to pay them. Deponent further states that, to the best of his knowledge and recollection, he has no interest in any reversed claim in Sanford's district, except three, that were purchased by the company after reversal, and but in few cases of any other description in that district, his whole interest being confined to four or five claims. Deponent further states that he uniformly told the Indians that if they had ever been before the certifying agent, and received any money for their lands, they should not complain. He uniformly impressed upon the chiefs with whom he conversed, the necessity of cautioning their people against complaining if they had honestly sold. De-

ponent further states that an Indian woman named Otikar, belonging to the Luchipoga town, and from whom he had purchased a reservation while a copartner in the firm of N. M. Thornton & Co., came to him during the time referred to, when the great certifying took place before McHenry, and insisted that he should have the contracts certified, having some time before disposed of his interest in the concern to D. & N. M. Thornton & Co. He states that he went in company with said Indian to N. M. Thornton, and told him he must have the contract certified. Thornton replied that it had just been certified. Deponent states that he remarked to Thornton that if it was certified it was stolen, and that unless he would immediately satisfy the woman he would go in and have it ripped up. Thornton then agreed to pay the woman five dollars in cash and give her her account, amounting to fifty-five dollars, if she would be satisfied. The woman took the money and made her mark to a deed; but she was not taken before the agent at that time, nor, as this deponent believes, at any other time, to be certified to her reservation. The contract was originally certified to B. V. Iverson & Co. Deponent further states that, in the conversation he had with McDougald, in Columbus, and referred to in his direct examination, he understood McDougald's remark, "that the plan of stealing had been adopted to bring about a reaction, and cause the true owners to sell their lands," as referring both to Sanford's and McHenry's districts. At the time the negotiation was going on, it was admitted by McDougald and the company that there were a great many stolen contracts, and this admission was understood to refer as much to Sanford's as to McHenry's district; that out of about one hundred and seventy contracts certified to by one branch of this company, McDougald stated there were about forty honest contracts, and these were contracts which had been certified to by McCrory and Walker. These contracts were embraced within certain dates which this deponent does not now recollect, but thinks it was from the 18th February, 1835.

Cross-examined:

Deponent states that it was not expressly stated in what district the hundred and seventy contracts were, but he understood them to be in both districts.

ARNOLD SEALE.

STATE OF ALABAMA, *Chambers county*, ss:

I, Felix Stanley, an acting justice of the peace in and for said county, do hereby certify that the foregoing deposition was answered, subscribed, and sworn to, before me, this 21st day of February, 1837.

FELIX STANLEY, J. P.

STATE OF ALABAMA, *Macon county*:

Interrogatories to be exhibited to Arnold Seale, to be read before T. Hartley Crawford and Alfred Balch, commissioners of alleged frauds in the Creek country in Alabama.

Interrogatory 1. Were you ever engaged in the same company of land speculators with Daniel McDougald?

Interrogatory 2. In your deposition, previously taken, you state that McDougald admitted that his (McDougald's) company had one hundred and thirty stolen cases and but forty good ones, and that this admis-

sion extended to Sanford's district as well as to McHenry's. State whether or not this was the observation made by McDougald : that he (McDougald) "knew that about forty of the alluded-to cases were genuine, for that he had attended to that number in person, but that it was likely that there might be some of the contracts imperfectly certified, and, if so, he regretted it, and should use his exertions to have them rectified;" and were not these remarks made in opposition to an opinion advanced by yourself; and in this conversation were any allusions had to Sanford's district?

Interrogatory 3. Do you recollect a letter written by McDougald to the company in which he was interested in Chambers county? If you do, what was the purport of that letter, and do you know where it is? If in your power, custody, or control, please attach the same or a copy thereof to your answer; and if not, state whether or not in that letter McDougald did not urge upon the company to deal fairly and liberally with the Indians, and in no case to take back the money.

Interrogatory 4. Did you ever see or know of McDougald's having certified an improper Indian, or defrauded one in any way? and state whether or not you did consider him a fair and liberal man in all his dealings with the Indians.

Interrogatory 5. In your previous deposition on the subject taken by Bryant you state that Col. Hogan returned to Fort Mitchell, and sent by you the notices for holding an investigation in the Tonanulgar town; that deponent went there and remained until Hogan returned; he then commenced the investigation again, when he met with opposition from McDougald and his company. State where Tonanulgar town alluded to is situated, and what sort of opposition was made by McDougald and his company.

Interrogatory 6. In your previous examination, before alluded to, you state that Hogan met the Indians the next day at Chapman's store, where McDougald and his company opposed him very strongly, that they had some difficulty and short words. State the means of opposition used by McDougald, and the short words; and was not the difficulty alluded to in relation to a tract of land bought by Lucas, who was killed by an Indian a considerable time previous, and alleged by McDougald to have been purchased at administrator's sale by him, (McDougald,) at the price of four thousand dollars, with the approved contract in his possession? Did not the Indian located on said land deny having sold it, but admit that he had received various sums of money from Lucas; but did not the chiefs and other Indians assert that he had sold to Lucas?

Interrogatory 7. Did not Hogan say to McDougald, that if he would pay the Indian two hundred and eighty dollars, he would not reverse the case? Did not McDougald refuse to do so, because he said that the Indian had been paid, but that he was willing to give the money to the town? and state whether or not he did so.

Interrogatory 8. In your previous deposition you state that McDougald came to you to make arrangements with you, and that you agreed on the terms of a compromise, which was, that he and his company were to give up all the stolen contracts, and guaranty to you and your company the right of recertifying the true holders. Did you not come or send to McDougald, and did you not say that you would enter into an arrangement with McDougald? If you did, what reason did you give for being willing to negotiate with him in preference to others?

Interrogatory 9. Who composed your company, and what interest did you demand?

Interrogatory 10. Did you not agree to take less than you at first demanded?

Interrogatory 11. Was not another meeting to take place, if the company would agree to your terms, in a few days, with an agreement drawn up?

Interrogatory 12. Did or did you not go to Chambers, and actually commence operations for the company which you supposed you had formed with McDougald and others.

Interrogatory 13. When the arrangement was not carried out, according to your expectation, did you not say that you were fooled, and were you not very much dissatisfied?

Interrogatory 14. Did you ever certify any Indian contracts for land? If you did, did you ever, by yourself or agent, take back, or were you in any way or manner interested in taking back, the purchase-money or any part thereof?

Interrogatory 15. Did you or not in all cases take the oath, a copy of which is hereunto annexed?

Interrogatory 16. You stated in your previous deposition that Hogan reversed a good many cases in your presence; and in another part you say that Mills and others were very active in preventing the Indians from coming before the agent. Please give the names of those that were reversed in the different towns, and those Indians who were prevented or induced not to go before the agent.

Interrogatory 17. What amount have you and your company invested in land claims in the Creek country, that is unsettled and in opposition to the company in which McDougald is interested?

Interrogatory 18. Do you consider yourself in these matters a disinterested witness? Are you not largely interested, both pecuniarily and in feeling? Can you say that you do not expect to be gainer or loser by the event of this investigation?

J. H. CAMPBELL,
Claimants' attorney.

STATE OF ALABAMA, *Macon county:*

Before me, Williamson M. Freeman, a justice of the peace in and for the county and State aforesaid, and at the house of the said Williamson M. Freeman, personally came Arnold Seale, who, after being duly sworn, deposeth and answers to the foregoing interrogatories as follows:

To the first, he answers that, at one time, he was engaged in a company with Nat. Macon Thornton and D. Thornton; and that he understood from D. Thornton that he had made an arrangement to have McDougald join them in their company, and asked deponent how he liked it. Deponent answered if he (deponent) conceived it to be his (deponent's) interest, he would submit to the arrangement he had made. Deponent then asked Thornton what kind of an arrangement he had made. Thornton said he had not time to relate the contract he had made then, but would at some other time, which he failed to do. Deponent then became dissatisfied and quit the company.

To the second, he answers that, in a conversation he had with McDougald, he stated that one branch of his operators had certified one hun-

dred and seventy contracts, and he knew forty of them to be honest contracts, for that they were contracts for which he had old bonds, and had been made by McCrory, himself, and Walker, and that they had made some advances on them; he did not state whether they were in Sanford's or McHenry's district, but that he took it for granted that the forty contracts alluded to were in McHenry's district, from the fact that he stated that McCrory had purchased them. He did not state that the forty contracts were or were not the only honest contracts in the one hundred and seventy. He says it was not; on the contrary, that he (McDougald) stated that they had adopted this plan of personating Indians, in order to have the right Indians sell their lands; that he himself was willing and anxious to have the true owners brought up and certified, and he was willing to pay the true owners the money; that he was willing that deponent and his company should do so, but that some of his (McDougald's) company opposed it and broke it up; and farther states, to a question asked him by N. M. Thornton, being present, that he has no recollection that the name of N. M. Thornton was mentioned in that conversation. He has no recollection that these remarks of McDougald were made in opposition to an opinion advanced by deponent. He states that he did not designate either district.

To the third, he answers that he has no recollection of ever having seen the letter alluded to.

To the fourth interrogatory, he answers that he never knew McDougald himself to bring up an Indian before the agent, to the best of his present recollection, but that he did not act in person in bringing up Indians; that McDougald told him that he had certified dead Indians' claims, and that he (deponent) considered that fraudulent. He says that he did not consider that he was fair and liberal.

To the fifth, he answers that, on the first day he does not think that McDougald was there, but some of his company were there; that Tonanulgar town was near Chapman's store, but that where they met on the first day was called Tonanulgar town also, on the agent's census-roll, but that the Indians called it Wartoolarkar. He states that he saw Mills busy with the Indians, and heard him tell an Indian, to a question asked by the Indian, to know what he should say to the agent, that he must tell the agent that he had sold his land to him, (Mills.) He saw Hudson take an Indian off and talk to him, but did not hear the conversation. He then brought him back before the agent.

To the sixth, he answers that he understood Paddy Carr to be one of the company; that he saw him busily engaged in talking with the Indians. He also saw Blake engaged in the same manner; heard none of the language except what he heard from Paddy Carr and other Indians, which he understands is not legal testimony. Saw McDougald and Hogan get very mad with each other, and have some short words, but does not recollect the words. He recollects hearing the Lucas case mentioned, but does not know that that was the cause of their being mad; he thinks that the Indian acknowledged he had sold the land to Lucas, and had received the money, but thinks that he denied having been certified. Recollects hearing McDougald say he had bought the tract of land at Lucas's sale, but does not recollect the price, if it was stated at all.

To the seventh, he answers that he does not recollect the amount, but that he thinks, upon a calculation, that there was some money coming to

the Indians, and thinks that Hogan did say if McDougald would pay it, he would not reverse the contract; thinks that McDougald stated that the Indian had been paid; does not, of his own knowledge, know any thing about McDougald's giving the money to the town.

To the eighth, he answers that the history of this transaction he has given in his previous deposition, is, that the reason he pitched upon McDougald was that he had more confidence in him than any other man in the company, and believed that if McDougald pledged himself, that he could rely on him; and that he did and still does believe that if McDougald had had his own way, there would have been no difficulty; that Woodward came to him (deponent) and asked him if there was any man in the company that he could believe in; that deponent said there was; that he could place confidence in McDougald if he would pledge his honor; and that shortly thereafter McDougald came to him.

To the ninth, he answers that his company was composed of himself, William Dougherty, Stroud, and Charles McLemore; these were all the heads of the company, but we had other operators; that he first demanded that one company should be equal to the other.

To the tenth, he answers that, at a subsequent meeting of the two companies, deponent and his company did agree to take less than they at first demanded; he thinks his company agreed to take one share less than McDougald's company.

To the eleventh, he answers that he thinks that the agreement was at the last meeting drawn up.

To the twelfth, he answers that he did not.

To the thirteenth, he answers that, after the arrangement failed, he did say that he believed their policy had been to prevent him (deponent) from opposing them until they got their contracts approved; and that he was dissatisfied and refused to sign articles of agreement presented to him by D. Thornton and Dr. Mills, and stated that he would have no more to do with them.

To the fourteenth, he answers that he has in person, both for himself and his company, bought up and certified a great many contracts, and that he has taken back thousands of dollars, and that it was done in pursuance of a general rule of the company to which he belonged, and which McDougald joined; and that the money was always honestly paid back to the Indians, so far as he knows or believes, or they were paid in property.

To the fifteenth, he answers that, in all cases where he paid the money over himself, he did take an oath similar to the one attached.

To the sixteenth, he answers that he does not recollect what cases were reversed, but presumes that they may be found by reference to the books of Hogan; nor does he recollect the names of the Indians prevented from going before the agent, as he has no record of their names.

To the seventeenth, he answers that he does not know how much he had himself, nor does he know how much his company has.

To the eighteenth, he answers that he does expect to be loser, and always has, ever since they commenced stealing land.

ARNOLD SEALE.

Sworn to and subscribed before me, this 14th day of March, 1837.

WILLIAMSON M. FREEMAN, J. P.

STATE OF ALABAMA, *Macon county* :

The examination of John Carrett, taken by consent, at the house of John S. Green, in the county of Macon, January 16, 1837.

Witness resides in Cussetaw, Chambers county, Alabama; has resided there since about the 1st of January, 1835. Dr. McHenry kept his office near this place, at a place called Seale's store; was frequently at the office of Dr. McHenry when he was certifying; witness's store was a little over a half mile from the agent's office, and he was passing to and from the office daily, from the middle of February till the 1st of March, 1835; there was a good deal of certifying done at the office between those dates; that the persons who had the most land certified, resided in and about Columbus. About the last of January, 1835, he first heard of the personation of Indians. Junius Brooks was the first person who gave him information about what was going on, and the manner in which Indians were drilled. From about the 1st of February to the 1st of March, there were encampments of Indians about Cussetaw. The Indians were kept in different bunches, some on one side of a branch and some on the other. Elijah Corley, who lived in Fish-pond, seemed to have control of one parcel, together with J. J. McCrory; these seemed to act together. Benjamin P. Tarver and Milton J. Tarver seemed to be interested with the other. Witness supposes that there were from four to five hundred Indians encamped about the agency; the woods appeared to be full of them. Corley informed witness that he was acting for McDougald, Shorter, and Tarver. Witness furnished a great many of the Indians with meal and bacon, which he kept for sale, and was paid therefor by Corley and McCrory, they having requested him to furnish. B. P. Tarver also purchased some provisions for the Indians.

The week that the certifying closed, witness had a conversation with E. Corley, who informed him that he had done a fine week's work, having had a hundred and seventy-two or one hundred and eighty-two pieces of land certified. Corley informed him that the way he did, was to go to the agent's book, and take off such locations as he wanted, and those which were not certified, the town in which the land lay, and the name of the Indian who owned the location; that he would then go to his camp, and take an Indian that he thought would answer his purpose, and drill him, by giving him the name that he was to answer to, the name of the chief of the town where the land lay, the situation of the town-house, and such other questions as the agent would be likely to ask. As well as witness recollects, McCrory informed him that he was acting for the Columbus company. Witness stood by, and saw a great many contracts certified, and was afterwards present at the investigation, and saw the Indians who were recognised by the chiefs as the true holders of the locations, and is satisfied that they were not the Indians that he had seen certified. Witness saw A. J. Robinson at the time that the certifying was going on; he seemed to be concerned with Wm. Vann, John J. Williams, and Gilder & Co.; this company filled up their bonds in the store-house occupied by witness. Robinson asked witness, on one occasion, why he did not take a hand with them; and when witness answered, he said that he would pick him out a good piece on the morrow, and have it certified to him. (witness,) as it would not cost more than five or ten dollars. Witness has heard Vann and Williams say

that they did not claim the land that was certified to them in this way ; that they only did it to prevent others from stealing it, and most if not all the contracts certified to that company were given up at the investigation. Witness knew that frauds were practised by McQueen & Co., S. Williams, and Thompson. There was a man named Wm. C. Hill, who was engaged in the business, but does not know who was concerned with him. Witness states that he saw Dozier, Nat. Macon Thornton, Columbus Mills, and Jonathan A. Hudson, about the agency at different times, while the alleged personation was going on ; and McHenry's books will show many contracts certified, in which the names of these persons appear ; and from his recollection, and the appearance of the Indians that were about the agency at that time, and the Indians he afterwards saw recognised by the chiefs as the true holders of the locations, he is satisfied that they had but few, if any, honest contracts certified during the time alluded to—say from the middle of January to the middle of March. Witness has heard Mills say that if any person interfered with his matters he would cut his throat from ear to ear ; witness understood him to allude to the contracts which he had certified. He also heard Colonel Wadsworth make threats if any person should interfere with his contracts. Witness knows that, owing to threats which had been made by those who were engaged in certifying, Dr. McHenry closed his office, and refused to certify for the greater part of the day. McCrory stated that the business below (in Sanford's district) was swept out, so that it was not worth attending to ; that they had gone through McHenry's, all that was worth having ; and that if McHenry would turn over his books to Judge Tarrant, they would get the few pieces that were good that lay about there. Witness attended the investigations held by Dr. McHenry in most of the towns in his district ; saw Dr. McHenry's notices of the time and place where he would hold his investigations, and a parcel of them were delivered to him by E. Corley, to be stuck up. Every opportunity was afforded the persons who had had contracts certified, to establish them, if they had been honestly obtained ; and Dr. McHenry gave notice that if the purchasers, or their agent or agents, would swear to the identity of the Indian certified, he would confirm the contract.

Witness states that he attended an investigation in Highlog-town, held by Colonel Hogan, and at two other places. A memorandum kept during the investigation, enables him to state that there were something like a hundred and seventy contracts reversed by Colonel Hogan in the towns in which he attended, and the cases in that memorandum, he thinks, were all reversed. Witness saw Mills, Blake, and Hudson at the investigations ; is not certain whether they were all at the investigations. The investigations were held in public, and after public notice and ample opportunity was afforded to the purchasers to substantiate their contracts. Witness is of the opinion that the different individuals interested made great exertions to keep the Indians from complaining. Witness states that, after a case was investigated, in which J. A. Hudson was interested, and reversed by Colonel Hogan, Hudson took the Indian off, and, after some conversation with him, through an interpreter, which witness did not hear, said Hudson gave him (the Indian) a paper, and then came up to Colonel Hogan and said he thought that the Indian would then acknowledge that he had sold him his land. Colonel Hogan then asked the Indian : he said

he had not sold, but that Hudson had told him that if he would acknowledge that he had, he would save him his land, and that he might still live on it; and that after a while they would drive off the white people, and he could have his land again. Hudson was present when the Indian made this statement, and did not contradict it.

Cross-examined :

Witness recollects positively that Corley said he was having land certified for McDougald, Shorter, and Tarver. Witness is perfectly certain that the admissions of Corley and McCrory, before related, were made about the 1st of March. Witness is positive that McCrory told him that he was acting for McDougald, Shorter, and Tarver. Witness has before stated that he saw the Indians who were present at the time contracts were certified, and afterwards saw different Indians identified by the chiefs at the investigations, as the holders of the same locations; but witness states that he cannot now recollect of any particular case of that kind; he does not remember the names of the Indians; he was a stranger in the country, and had resided in Alabama but a short time. One case he does recollect: it was a woman by the name of Ote-kar, of Luchipoga town, who was certified to B. V. Iverson & Co. Witness never heard Dr. Mills make any threats but at one time.

Witness never heard of any complaints against Robert S. Hardaway, as agent for the Columbus Land Company, that he now recollects.

JOHN GARRETT.

STATE OF ALABAMA, *Chambers county* :

Deposition of John Taylor, taken before me, Felix Stanley, an acting justice of the peace in and for said county, to be read in evidence in all cases to which the same may apply, and which are now pending before Thomas H. Crawford and Alfred Balch, Esqs., now sitting as commissioners, at Green's, near Tuskegee, to investigate the frauds alleged to have been committed in the sale of Creek Indian reservations.

This deponent being duly sworn, deposes and says: That, in the first of the year 1835, he resided about a mile and a half from Dr. McHenry's office; some time in February of that year, Judge Shorter came to deponent's house, and staid there for a day or two; he had a book in his possession, which he said was the agent's book, and that he was taking a list of all the uncertified cases in McHenry's district. This was a day or two before the crowd collected at the agency. McDougald, Mills, Watson, Hudson, McDaniel, Wadsworth, Featherston, Woodland, N. M. and D. Thornton, came to my house a day or two after Judge Shorter arrived; Blake was also there occasionally; the rest put up at my house, where most of them staid until McHenry started to the lower part of his district, when they also went away. When McHenry returned, some or all the persons above named came back and staid at deponent's house again: while at deponent's house, he frequently heard them talking over their plans, and the course which they had been and were still pursuing.

Deponent heard Judge Shorter say that the first lands he had ever certified in the nation, he had pursued Colonel Abert to Line creek and back to Lewis's stand, and finally had them certified at Fort Mitchell.

The land he said belonged to the Uchee Indians; and he said it made no difference with him whether he had the right Indian or not, so he was a Uchee Indian; and he further stated that the best of it was, that, after he had had them certified, he took them down to the branch, and took back all the money from them. Deponent was satisfied, from what Judge Shorter said, that in these cases he had the wrong Indians, and not the true holders of the land, certified. Heard McDougald state that money was a curse to an Indian, and that they had better have five dollars for their land than a thousand.

Judge Shorter told deponent that if he would go up to McHenry's district, he would show him how they had closed the business in Sanford's district, and they were determined to close McHenry's in the same way. Witness understood Judge Shorter to allude to the personation of one Indian for another. Witness did not believe the plan possible for a day or two, when he went up to McHenry's office, where, from the course pursued, and what he saw, he became perfectly satisfied that these men were basely engaged in personating Indians, or, in other words, in stealing land. Propositions were made to deponent by A. J. Robinson and others to join them. Robinson stated to deponent that they were engaged in stealing lands by personating Indians, and on one day borrowed five or six hundred dollars in one hundred dollar bills from deponent; and, in the evening, he stated to deponent that he had certified a number of contracts in the course of the day with the money, and then paid him back the same bills which he had borrowed of him in the morning.

Deponent further states that he was present on one evening when a settlement of the day's operations took place between them. McDougald, Watson, D. & N. M. Thornton, Mills, Blake, Hudson, J. G. Worsham, McDaniel, Woodland, and some others were present. D. Thornton had the money; and it was stated that a certain number of contracts had been passed that day with the money which had been then laid on the table for a settlement. It was stated that interpreter's fees had that day been higher than they had been before; and the impression was made on his mind that interpreter's fees, and about five dollars to the Indian, was all that was expended by them for each contract certified.

This settlement took place at the house of this deponent; during this time deponent was at the office of McHenry almost every day; and there were large numbers of Indians encamped around about the agency—say from three to five hundred. Deponent states that he was at McKeen's a short time before Colonel Hogan closed his investigation at that place. McKeen lived on the old Federal road, and in Sanford's district.

The next day deponent went to Glenn's, on the Hachechubba creek, where Colonel Hogan held an investigation. Deponent states that a good many Indians went forward and complained, and a good many contracts were reversed. Mills and Hudson, and perhaps some others of the Columbus speculators, were present, and had their interpreters. Mills and Hudson were very active in taking out Indians, and conversing with them; but what was the subject of the conversation deponent does not know. Colonel Hogan then went to Cowiga, and this deponent was present there also; an investigation was held, and some contracts were complained of as fraudulent, and a good many complaints that the money with which they had been certified had been taken from them. Deponent does not understand the Indian language; but in these towns the

Indians frequently told him, through interpreters, in whom he had every confidence, that Gibson, Scott, and Dave Hardridge told them not to go up and complain, for Hogan had no power to give them back their lands, and that he only wanted to enrol them, and take them off to Arkansas.

The next investigation that deponent attended was at the Wartoolaharka square, where Colonel Hogan investigated a part of the Tonanulgar town. At this investigation an Indian came up, and complained that he had not sold his land. The land was certified, as well as deponent recollects, to Hudson. After investigating the matter, Colonel Hogan said he would reverse the contract. Hudson then took the Indian off, and, after having him out some time, he came back with the Indian, and told Colonel Hogan that if he would interrogate the Indian again he thought he would acknowledge that he had sold. Colonel Hogan then asked the Indian if he had sold his land to Hudson, and he said no, and presented a paper. Colonel Hogan asked him who gave him the paper, and he said Hudson; he further stated that Hudson had told him that he might live on the land, and that he (Hudson) would save the land for him, and in a short time that he would drive the white people off, and he should have his land again. This was what the interpreter stated to Colonel Hogan that the Indian said; it was interpreted to Colonel Hogan in the presence of Hudson, and he did not contradict or deny having so stated to the Indian. Colonel Hogan then seemed to get angry, and, I think, tore up the paper, and said that the contract should stand reversed. Colonel Hogan told the Indian that he need not take a paper from any body, as the land still belonged to him if he had not sold it. Colonel Hogan further stated that evil consequences must grow out of such statements to the Indians; and then advised the Indians that they had better make their arrangements, and get off to Arkansas. Colonel Hogan then went to the neighborhood of Chapman's store, and held an investigation for the balance of the Tonanulgar town. Deponent was present there also; McDougald, Hudson, Blake, and Mills, were present also. While there, Dr. Mills drew a pistol on Absalom Islands, who was a half-breed chief and an interpreter, and swore that if he spoke to one of his Indians again he would kill him. He also commenced abusing a young man by the name of Coker, and said he was interfering with his Indians. Coker stated that he had only told the Indians if they had not sold, they ought not to acknowledge that they had. Mills said it was no business of his; that he had made his own arrangements with the Indians, and that he would whip or kill any man who interfered with them. Witness states further, that he heard a conversation between Luther Blake and John J. Williams, who is now deceased, at a camp where this deponent and others were staying. Blake admitted and said that he had made arrangements with the Indians belonging to the Tonanulgar town, to go before the agent, and acknowledge that they had sold their land, and that he had promised them, if they would do it, they should be paid for their land; and Blake then said that he intended to do it. Deponent further states, that, while at the Tonanulgar town, it was understood that the Columbus company had sent a white man and an Indian into the Chowocolo and Oswitchee or Opilika towns, to drill the Indians against Hogan got there to investigate. Believing this report, the company to which he belonged divided, and one party pursued the per-

sons who had been thus sent, to try to overtake them, and prevent any improper influence from being exerted over the Indians. When Colonel Hogan got to these towns, a large proportion of the Indians came forward and complained, and, after investigation, the contracts were reversed.

Deponent further states, that in all the conversations held in his presence by persons attending the investigations, except those who appeared to be interested, it was impressed upon both chiefs and Indians that if any of them had sold their lands, they should not say that they had not, but that they should acknowledge it. Deponent further states that he is interested to a small extent in four contracts only in Sanford's district; two of them stood open on the books at the time of the investigation, and were certified by Colonel Hogan; and that he is interested in no others in Sanford's district.

Deponent further states, that while at Tonanulgar, Indians frequently told him, through interpreters in whom he had every confidence, that Mills, Blake, McDougald, and Hudson had told them that they must not complain, but acknowledge that they had sold their land to some of the company; that Hogan had no power to give them back their land, and that he only wanted to enrol them to have them carried off to Arkansas.

JOHN TAYLOR.

It will be seen that the last deposition given by the witness Seale was at the instance of those who stood charged with fraudulent conduct in McHenry's and Sanford's districts. Simultaneously with the introduction of these proofs, the originals of several letters, written by Eli S. Shorter and others, were laid before the commissioners, copies whereof are in the words and figures following, to wit:

COLUMBUS, *March 1, 1835.*

GENTLEMEN: I have just returned from Dr. McHenry's; when there, Yargo sold and certified his land to Dr. Billingslea for \$6,000, and then gave back \$3,000 of the money, and took a bond for the occupancy of the land west of the river. I left at the agency Hayden and his son, General Woodward, Stone, McBryde, Collins, the whole Columbus company, and a host of others, with, I firmly believe, four hundred Indians hid out all round the hill. Certifications commenced late yesterday evening and about sixty were taken through. The agent will be at home certifying the whole of next week, and in that time most if not all of the land will be swept that is worth a notice. I have the agent's promise to meet us at any place of our appointment on the Monday following; and to obtain this, I have to interest another man in our company, so far as it regards McHenry's district, and to give him one-eighth part.

It is unnecessary to mention names; the thing was necessary and was therefore done.

Now, if we are to do any thing, you must instantly, upon reading this letter, lay all other business aside, and gather up as many Indians who can be depended on as possible; and Corley or Craven, with one of the Griersons, must come on with them towards the agency in Chambers.

The other, with the other Grierson, must remain behind, and collect and come on with another company. When you get within from five to

ten miles of the agency, stop where you can get water and provisions, and send a messenger to us at the agency to let us know where you are, and we will meet you Monday morning with the agent, and proceed to business. Your messenger must reach us on Sunday night. Camp your Indians out of sight of the road. You need give yourself no trouble about the value of the land; I will arrange all that. Stealing is the order of the day; and out of the host of Indians at the agency, I don't think there were ten true holders of land. When I left, there were not more than eighty reservations left in all Tuckabatchee; they will all go to-morrow; then will follow Thlobthlocco; then Kialgie; then Oak-tar-sar-say; then Eufaula; and in two weeks the whole host of Philistines will be in your quarter, and, rely upon it, they will carry all before them.

Now Scott may wrap himself in his Indian blanket, and say all this is impossible; but I say it is not only possible, but certain. When I see such men with so few advantages getting so much valuable land at ten dollars per tract, and see how much money we have paid out, the power we have had, and see the quantity and quality of land we have received, and particularly when I think of the reason why these things are so, I can almost tear my hair from my head. There is yet time to do something, but I almost despair of its being done. If Scott's Indian wife was at the devil, I should have some hope.

We shall go into the strife, and do what we can. If you will join us—well; if not—well. We have plenty of money. You need not come unless you drill your Indians and prepare them to receive ten dollars in the store for every contract certified. Be sure to bring two old women; and, if you possibly can, be sure and bring Tallanhar, an old woman of Thlobthlocco town, who is the mother or mother-in-law of John Reed, an interpreter, who was killed last year.

The whole show will be up in four weeks from this time; and all the Indians who do not sell will lose their lands. This system has not been working more than three weeks, and upwards of 1,000 tracts have been certified. The stream is getting wider, deeper, and stronger every day. If things are to be radically altered as to money at Tallapoosa, I will furnish funds in paper money to certify the balance; if not, the Indians may be disbanded, and we will quit the drive, for I will stand the past-pull no longer; and if Dr. Scott adopts the rule of settlement at the certified prices, it must be a good rule, and shall apply to all cases.

Respectfully, &c.

ELI S. SHORTER.

TO MESSRS. JOHN S. SCOTT,
E. CORLEY,
N. M. & N. H. CRAVEN.

COLUMBUS, *March 1, 1835.*

SIR: Mr. Corley gave me time to be there to close the trade with him until I could get out, or until they commenced certifying. As my business in court is not settled, I am unable to say when I shall be there; and if you have not closed the trade with Mr. Corley, you will do it for me, if you are not disposed to go into it; but I prefer your connexion in the matter. There is nothing going on at this time but stealing land, with about fifty Indians. Pay them ten or five dollars when certified, and get all the balance back, and get four hundred or five hundred contracts certified with

fifty Indians is all the game. Judge Shorter has just returned from Dr. McHenry's : he states the different speculators have about 500 Indians hid out and certifying at night. Yargo is certified to. Without a rush, we are gone.

BENJAMIN P. TARVER.

James S. Moore was married on to-night. The judge thinks that the largest proportion, if not all the land that is before Dr. McHenry, will be certified on this week. Now is the time, or never! Hurrah, boys! here goes it! Let's steal all we can. I shall go for it, or get no lands. Now or never.

Mr. M. A. CRAVEN,
Fish-pond, Alabama.

BENJAMIN P. TARVER.

COLUMBUS, *March 25, 1835.*

GENTLEMEN : I intended to have started to the store in Tallapoosa to-day, but Judge Shorter thinks it better for me to stay and attend McHenry's office next week. I want you, so soon as you get this letter, to start Baily and Wat. Grierson over with as many Indians as they can start. I want them to be at the office with the Indians next Monday, if they can ; and as to the balance of you, you must be up and doing, for I can assure you what we don't do before Tarrant, the next week of certifying, will not be done by us ; for just as soon as they finish on this side of the Tallapoosa, every speculator will be over there. They intend first to try to get a part of that district cut off to McHenry, and if they fail in that, they will take their Indians and go on ; for those lands are what they are after, and they will have them. They have rogued it and whored it among the Indians until I fully believe that, for the purpose of getting a piece of land, they would swear before Almighty God that the Indians in Russell county were located in Coosa. I think it necessary that one of you go down to Hatchechubba and Hickory-ground towns, and have the best of the lands valued and ready for certifying, as that is the part of the country they intend stealing in. Gentlemen, don't lie on your oars, with the belief that no man can do any thing with Indians in that part of the country, for they have Indians of their own, and they will fetch them with them. The harvest is nearly over, and perhaps there will never be another such a one. I, therefore, think it necessary for us to be up and doing while it lasts.

ELIJAH CORLEY.

TO SCOTT & CRAVENS.

N. B. The judge says he thinks it best to put off the settlement with the Indians on that side, until after the next week. There is plenty of money here ready, but we thought it best not to send it until there are two or three in company. M. A. Cravens must be certain to come with Wat and Bailey. The Indians killed old — last night, but for what cause we have not found out. Yours, &c.

E. CORLEY.

With all these proofs before them, the question arose—Could the undersigned and his colleague recommend to the President to ratify contracts in favor of individuals evidently involved in so much guilt? The

parties were invited to introduce such evidence as might be within their power, to show that they appeared before the President with clean hands, and were entitled to his favorable judgment upon their claims. Scarcely an effort was made by any one of them to establish his innocence. The third article in the treaty declared that these tracts, the reserves, might be conveyed by the person selecting the same to any other person, for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed by the President for that purpose, but shall not be valid till the President approves the same.

The position of the claimants implicated was believed, by the undersigned, to be that of a party seeking a decree for a specific performance in a court of equity; and the position of the President, under the foregoing third article, like that of such a court, which possesses the power to refuse such a decree unless the acts of the complainant are shown to be perfectly fair and honest.

The parties alleging that they had a right to the reserves certified to them, because they had been so certified by an agent of the United States, lost all the benefit of any presumption in their favor, from clear proof of the fact that they had, by themselves and agents, deceived the certifying agent, by causing Indians to be brought before them, who personated the true holders of the reserves, attempted to be thus fraudulently set up. In the adjudication of a large class of the cases herewith transmitted, the undersigned has acted on the principles here stated, and has given his judgment against the claimants. If, in doing so, he has erred, he has the consolation to know that their judgments will be subjected to the scrutiny of the honorable the Secretary of War and the Executive; his own judgment and conscience were well satisfied that he could not pursue any other course. A second class of cases was brought under the consideration of the undersigned, in which it appears that McHenry had certified them after he had been dismissed from office, and had received full notice thereof. Notwithstanding some of this class might be honest, and in all respects fair, it was impossible for the undersigned to recommend their confirmation, except where the parties claiming offered to pay to the proper authority a "fair consideration" for the reserves so situated. The undersigned regarded the provision in the third article of the treaty of the 24th of March, 1832, to wit: "The contract shall be certified by some person appointed by the President for that purpose, but shall not be valid till the President approves the same," as imperative upon him. A certificate from McHenry, given after his dismissal, is, in the judgment of the undersigned, wholly null and void, and of no legal effect whatever. The decision of the undersigned on this class of cases has been against those holding contracts so certified. It will be perceived that the regulations before cited, and which were indispensable to the protection of the rights of the Indians, declare as follows: "When the price agreed upon is less than \$1 25 an acre, the agent will add to his certificate a statement that the land is proved to my satisfaction to be of an inferior quality, (being sandy, or marshy, or containing so many acres only which can be cultivated, or specifying any other facts which may have come to his knowledge, showing its quality,) and that I consider it worth only (here insert the sum.*)"

It would have been easy for the agents to comply with this provision in the regulations. It was adopted obviously for the purpose of enabling the President to ascertain whether that *fair consideration*, mentioned in

the treaty, had been paid to the Indians. In many contracts submitted to the undersigned, and herewith transmitted, this duty was either not performed at all by the agents McHenry and Sanford, or in such an inartificial manner that the President could not decide whether this *fair consideration* had been paid or not. The undersigned has given his opinion in all the cases so situated, that these contracts ought to be rejected, and the land sold for the benefit of the original reservees. After the agents McHenry and Hogan had investigated as many fraudulent cases in McHenry's district as were accessible to them amidst the confusion that prevailed on the subject of the Indian reserves, McHenry recertified a considerable number of contracts. The parties claiming the lands so recertified, filed memorials before this board, and demanded that the President should be requested to confirm their recertifications. But, in adjudicating upon this class of cases, the undersigned were met by an imperative instruction from the War Department that they should only consider the legal validity of the first contract for a reserve on McHenry's district, and disregard all recertifications, except under circumstances existing, or to a very few reserves, and which will be seen by a particular examination of the general report. With this peremptory instruction before them, the undersigned could only yield a prompt obedience thereto, however technical he might consider it to be. These cases have been decided by the undersigned against the second purchaser. But the inquiries of the undersigned and his colleague were not confined to McHenry's district. Their instruction required them to investigate those contracts that had been certified by Judge Tarrant and General Sanford. It soon became evident that the former gentleman had discharged his duties with a remarkable degree of fidelity, zeal, and ability. The few impositions practised on him had soon been detected, and the wrongs done to the Indians repaired. General Sanford's district comprehended a large quantity of good lands, which had been allotted to the reservees. Complaints had been made that frauds had been practised upon him, as well as upon McHenry. The latter, in his letter of the 12th March, 1834, says, "I was at Columbus a few days since; General Sanford stated to me, that in several instances they had produced the wrong Indian, and he had certified to the contract, and he had since detected it, and was investigating some of them when I was there." These complaints having reached the President, directions were given to General Sanford to examine into the alleged frauds. Accordingly, he gave notice that he would proceed to hear complaints from the Indians at Columbus, in June, 1835; but none of the reservees attended. On the 25th August following, Neah Micco, and four other chiefs residing in General Sanford's district, addressed a letter to the President, of which the following is a copy:

STATE OF ALABAMA,

Creek Nation, August 25, 1835.

To the PRESIDENT of the United States:

DEAR SIR: The nation of which we are chiefs have never found you wanting in disposition to do them justice, as far as you could; and they therefore appeal to you now with confidence. It has been made known to you before, that wrong had been done, and frauds committed on many of our people by the whites, who have managed to get their land, hiring

one Indian to assume the name of another. This has been done in obtaining a great portion of lands belonging to the Indians on the Cusseta, Ufula, Uchee, and other towns, which can be made to appear whenever those whose land has been stolen can have a chance to show it. We know that you sent our friend General Sanford to investigate these frauds, and have justice done to those that had been wronged. He could do nothing, because the Indians were afraid to go to Columbus, being alarmed at what was told them. When the agent, General Sanford, came to Columbus to attend to this investigation, I, Neah-Micco, as head chief of the nation, called on him, when he informed me that he had returned to look into the frauds, and that I must let the Indians in his district know it. I accordingly informed the Indians, who, as soon as they got the information, a great many of them who had never sold their land, came to my house, on their way to Columbus, to meet the agent. Whilst at my house, and at other places, they were told by the linguists, that had been employed by the whites to purchase land, that all the agent and other persons wanted, was, to get them to Columbus, in order to arrest some of them for old debts, and enrol and send the balance off to Arkansas. This so alarmed the Indians, that none of them could be persuaded to go before the agent. I then wrote to the agent to meet the Indians on the Alabama side of the river, where they would be free from the fears of arrest and enrolment. But he refused to meet them there; from what cause we do not know. Soon after this, he left for Washington city. Now, on his return from there, he states that nothing can or will be done further; and that he has written to you to approve all contracts. In addition to the above, we would state that many of the Indians whose land had been wrongfully taken from them, live a considerable distance down the river; and before they heard the agent had returned to investigate their claims, and could get to Columbus, the agent had left for Washington city. From all this you will see, that although many of the Indians had been wronged and defrauded by the unjust conduct of some of the speculators, they have had as yet no chance to be righted. The time is approaching when the Indians will have to emigrate, and many of them are now willing to go; but as they have received nothing for their land, and feel that they may yet be righted by the President, they make this last appeal to his justice, and desire to remain until the frauds can be detected, and they have a chance to sell the land granted them by the treaty. For this purpose, we hope that the President will appoint an agent, one acquainted with the Indians, and in whom they can place confidence, with instructions to visit the chief towns and other places in the nation, where they can meet him without fear, and prove before him the frauds that have been committed upon them. We know of our own knowledge, that many have lost or are likely to lose their land, who never have sold or pretended to sell; and it will be made plain if an agent can be sent among us, as desired. There are many Indians also who have never yet sold their land, or had it taken fraudulently: these are desirous of selling, that they may make preparations to emigrate; but as there is at this time no certifying agent, they have no chance to sell. We desire the President, therefore, to give the agent above requested, if he shall be good enough to appoint one, full power to certify and sign contracts hereafter to be made. The Indians, as our friend well knows, are ignorant of their rights, and easily imposed upon. Many of the whites are unjust, and take the ad-

vantage of their ignorance. In buying their lands, frauds have been committed, which can be brought to light. We do, therefore, make this most earnest appeal to our great friend the President, that, as far as he can, he will grant us what we do not believe he can deny to the feeble and injured. If he cannot do anything for those of us who have been injured, they must submit to it; but if he can, it will be an act of justice to the oppressed, and punishment to those that have wronged them.

NEAH-MICCO, his + mark.

EFAR-EMUBLAR or CHARLEY, his + mark.

THEKOBACHIE-FIXICO, his + mark.

CHARPIC-CHAR-YE-HO, his + mark.

NE-HAR-THLOCCO, his + mark.

Witnesses :

B. MARSHALL,

PADDY CARR.

The undersigned believes that the allegations contained in this letter were true. Very soon after this letter was received, Colonel Hogan was directed to examine the contracts certified by General Sanford, and report the number that were fraudulent. This officer proceeded early in the winter of 1836 to the discharge of this duty, which was rendered exceedingly difficult owing to the secret and open opposition of many persons, whose moral conduct was implicated in the transactions before General Sanford, to any investigations whatever. On the 22d January, 1836, Colonel Hogan writes as follows to the Commissioner of Indian Affairs :

“I commenced hearing complaints at this place, thinking it would be more convenient for the Indians, as well as such whites as chose to attend, and accordingly assembled the chiefs, who agreed to have their people there. Two or three towns assembled, and so did a crowd of land-buyers and their interpreters, who are active smart negroes. The first day we had some sharp sparring between the Indians and the land-buyers. The Indians came forward and gave in their statements with rather too much truth, and a scene took place of rather novel character. Some Indians denied having sold their land, but Mr. Hudson, who figures largely in the Creek nation, asserted they lied, for they had sold to him. The Indians denied it, but said that Hudson had told them their land had been stolen, and they must steal some other Indian's land, and he would give them ten dollars, and that was all the money he had received, and that had been paid him before General Sanford had been taken back. I demanded of the Indian the name of the person who took it back, and he pointed to a black fellow present, named Tom. Turning rather quick on Tom, I said, ‘Ah, Mr. Tom, are these your tricks?’ The poor fellow replied, ‘Master, I had to do what Mr. Hudson told me to do.’ Hudson flew in a rage, and swore he would blow Tom's brains out if he opened his mouth again. I told Mr. Hudson to keep cool; it was useless to get into a passion; I had an unpleasant duty to perform, and it must be done, and it was useless to get into a passion, as nothing could be made out of me by it. That night the interpreters were sent in every direction among the Indians, to induce them to stay away. A council was held at Neomicco's, and Paddy Carr staid with them to keep the Indians off. Paddy has

been deeply engaged in buying Indian reserves, and is as much implicated as any of the whites. He has as many complaints against him as there are against others. He is, of course, opposed to the investigation. The next day a few Indians and two chiefs came before me; but now all was smooth and fair, and they answered for all their town, and all sold but a few cases. I was informed that the speculators had bought up the chiefs, and were slaying beeves, and feeding them to keep away; whiskey was also profusely distributed among them. I determined to hear no more complaints at this place, and would remove the whole affair to their own council-fires, and dismissed what few had come in, and gave public notice that I should hear complaints and investigate in the town squares. Enclosed is a copy of the handbill I have issued.

“The chiefs all seemed very much gratified at my determination to go into their towns. It was always my determination to investigate the complaints in the towns, but I had hoped I should have to enter the complaints here; but two days ago, experience satisfied me that I could not probe the matter at this place, as the Indians were cowed by the mass of whites assembled on the occasion, but on his own square he will not fear any one. Major Abbott has just completed copying the report of Doctor McHenry’s district. We have reversed six hundred and fifty-six cases in that district, and unless your agent, whoever he may be, that will be appointed to recertify, goes into the town square, and in the presence of the chiefs and other Indians, on days specially appropriated, and due notice given to all concerned, and these, and these only, certify to the land of the Indians of that town, the same, if not a more extended, system of fraud will be carried on by the agents of the land-buyers. This plan, and this plan alone, will check it. I have reason to believe that companies have been formed, on a very extensive scale, to speculate in the reversed cases; and unless Doctor McHenry’s successor is wide awake to these people’s plans, they will deceive him, and impose the wrong Indians on him, and the same complaints will be reiterated. In taking testimony, when it was necessary to have it, I found at first that I was quite in the dark. Men of fair standing would be brought up to testify to a particular fact; but when I made the inquiry as to their interest, direct or indirect, I found them members of the same land company. In order, therefore, to know how far I could rely on the disinterestedness of various persons grouped around me, and who followed me constantly from place to place, I produced a list of the names of the several land companies, as far as I was able to get them, and I send you a copy of what I have obtained; but I am convinced that it is very defective, and that the companies are much more extensive than is generally supposed. Although we have done much in ferreting out frauds in the district, I am well satisfied I have not been able to get all the cases; for on my return from Mobile, and whilst I remained at Tuskegee, there were complaints coming in every day; and when I asked the Indians why they did not appear before me in the square, they said they were told by the white people that their land was gone; but if they made no complaint to the agent, (meaning myself,) that they should be paid the full price of their land; consequently, having believed what was told them, they have remained away, believing it was better for them. But now they found they had been fooled, and if they deferred making complaint any longer they would lose both land and

money ; and in every instance of this kind, it was an admitted case of perverting one Indian for another."

He also writes on the 14th of February, 1836, as follows :

"I am gratified to learn that my report has been received and is acceptable to the Department. A greater mass of corruption, perhaps, has never been congregated in any part of the world, than has been engendered by the Creek treaty in the grant of reservations of lands to those people. I am followed from place to place by gangs of from twenty to forty speculators, as they are termed ; and nothing but my long residence in Alabama and known character has prevented me from coming into collision with these people, who occasionally break out, but generally behind my back, when I do not hear them."

On the 7th January, 1836, Hogan writes to General Gibson as follows: "Since writing this letter, I have had a visit from Opothle Yoholo, Tuckabatchee Micco or Little King, Mad Blue, Little Doctor, and several others ; they came to talk about the manner the white people were taking the lands of their dead relatives, and to ask me to forward a memorial they had prepared, addressed to the President. They say the bargain they have made with them they will comply with, and go when I say the word ; but they do not want to go under the control of the company ; and since they have learned that Captain Walker is to be one of the company, they seem to be more dissatisfied. I shall write you more fully in a day or two as to the prospects of emigration ; every thing wears a steady appearance of a full and complete emigration during the approaching season. I am much engaged all day in hearing complaints of frauds committed on these unfortunate people, and some of them amounting to highway robbery. I have never heard or known of such gross cases of fraud as are daily developed before me, a full report of which I shall lay before the proper department in due season."


On the — February, 1836, Hogan writes as follows, (see Doc. 276, p. 342 :) "I was compelled to abandon the investigation at this post : the Columbus land speculators came over in a body, Blake, Howell, and others ; and I found I might as well do nothing as to attempt to investigate here. Beeves were slain and whiskey distributed among the Indians. Their interpreters were sent among them to alarm and frighten them off. The chiefs, I have no doubt, were in some instances bribed to lie against their own people. Paddy Carr, who is completely identified with the speculators, kept off a number of the chiefs at Neah Micco's residence, where they held a council with Tuckabatchie Hadji at their head. Finding how all things were managed, I dismissed them, and told them that I would go into their town square, and there investigate. If by this means I cannot get at the truth, it will at last put these gentry to as much trouble as they have cost me."

In a postscript to a letter of 30th January, 1836, Hogan says, "I have had much opposition to this investigation since I came into this district, and the opposition seems to be systematized."

Colonel Hogan, notwithstanding the difficulties in his way, and which are detailed at some length by the witness Seale, persevered, and investigated many cases. The results of his labors, which were, however, interrupted by the outbreak of the Creeks in the spring of 1836, have been given to us in his book marked B, and which contains, as the undersigned believes, undeniable evidence of the accuracy and ability of Col. Hogan.



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